



Fact or Fiction: Sex Trafficking, Sex Work,
and Human Rights at the Super Bowls

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Executive Summary

Fears that large sporting events like the Super Bowl fuel spikes in rates of human trafficking have been continually disproven in the United States and around the world. Yet this rumor continues to circulate, encouraged by law enforcement, state and national governments, and the media. In anticipation of Super Bowl LVI in Los Angeles, California, this report will consider the root of the ‘Super Bowl sex trafficking myth’ and how it interacts with the broader socio-political landscape, the conflation between sex work and human trafficking, and the fulfillment of sex worker rights.

The analysis presented finds that the perpetuation of the myth uses rhetoric that equates consensual adult sex work and human trafficking. By conflating these two very different phenomena, the discourse encourages the prohibition of prostitution, at the expense of sex workers, survivors of human trafficking, and entire communities. The report also demonstrates how the narrative of increased rates of trafficking around the Super Bowl might serve alternative motives of local governments and NGOs in controlling the narrative around human trafficking, acquiring sustained funding, virtue signaling, and maintaining social control over certain populations.

Conclusions are drawn through an examination of the legislative context around sex work and human trafficking in the United States, an analysis of different intersectional frameworks through which to consider sex worker rights, and a historical review of the conflation between human trafficking and consensual sex work and how this conflation drives prohibition. The report will then look at how this context fuels the debate over commercial sex driving rates of human trafficking around the Super Bowl, presenting evidence that has continually disproven an increase in trafficking related to the event. Examples will be drawn from previous Super Bowls as well as other large sporting events around the world that have attracted similar rumors. The report will also pay special attention to the local context of sex worker rights in California, including an examination of the state statutes regulating commercial sex, new and proposed legislation, and data around arrest rates for misdemeanors and felonies.

With acknowledgment of the shortcomings of the arrest data presented, this analysis concludes with policy recommendations to better serve the human rights, health, and safety of sex workers and survivors of human trafficking. Paramount among these recommendations, the authors encourage further study of the impact of local and national laws regulating sex work and ask governments to consider the full decriminalization of consensual adult sex work to protect the rights and safety of sex workers and survivors of exploitation and abuse.

I. Introduction

In 2012, the World Health Organization (WHO) announced that “all countries should work toward the decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.”¹ Still, in the United States, efforts to combat human trafficking, particularly trafficking for commercial sex, have focused on the prohibition of prostitution. Policy strategies and popular rhetoric regularly conflate human trafficking and adult consensual sex work with the goal of mutual abolition. Media reporting on trafficking and sex work, as well as some of the government programs and NGOs working on these issues, encourage this conflation. But consensual adult prostitution and human trafficking require very different policy approaches to promote the health, safety, and human rights of impacted communities. Prohibition of prostitution ignores conclusive research and the lived experiences of sex workers, both of which consistently show that the criminalization of consensual sex work increases the likelihood of trafficking and abuse, assault of sex workers, and rates of sexually transmitted infections (STIs).

One of the most concrete examples of conflationist rhetoric being employed to spread misinformation and trafficking hysteria is in the common myth that large sporting events cause a spike in human trafficking by increasing demand for prostitution. For years the Super Bowl has been the main focus of this fallacy. Although this myth has been continually debunked, each year media outlets and anti-trafficking groups continue to proliferate fabricated statistics about sex trafficking spiking around the event.²³ In a 2018 study published in the *Anti-Trafficking Review*, researchers out of the University of Texas, Austin and the University of Minnesota, Twin Cities, used empirical evidence to correct the media narrative linking major sporting events and sex trafficking. After reviewing fifty-five scholarly articles on sporting events and trafficking for sexual exploitation, they found that, though online ads for sex may increase during large events, such as sports games, concerts, and conventions, an increase in trafficking does not follow. Online advertisements for sex are in no way indicative of human trafficking or even an increase in demand. Large events like this might even decrease the availability of clients, reducing instances of commercial sex.⁴ In sum, “the linking of sporting events and trafficking reflects broader narratives about sexuality and sexual exploitation that depict men as aggressive and autonomous, and women as victims in need of rescue or as criminals who should be arrested.”⁵

A 2011 Global Alliance Against Trafficking in Women (GAATW) report on sporting events and trafficking also showed that cities hosting the Super Bowl tend to make arrests for trafficking during the

¹ Anna Forbes and Sarah Elspeth Patterson, “The Evidence Is in: Decriminalizing Sex Work Is Critical to Public Health,” (The Center for HIV Law and Policy, August 13, 2014), <https://www.hivlawandpolicy.org/resources/evidence-decriminalizing-sex-work-critical-public-health-anna-forbes-and-sarah-elspeth>.

² Maggie McNeill, “Lies, Damned Lies and Sex Work Statistic,” *The Washington Post*, March 27, 2014, <https://www.washingtonpost.com/news/the-watch/wp/2014/03/27/lies-damned-lies-and-sex-work-statistics/>.

³ Elizabeth Nolan Brown, “Super Bowl Sex-Trafficking Myths Return,” *Reason*, October 1, 2020, <https://reason.com/2020/01/10/super-bowl-sex-trafficking-myths-return/#>.

⁴ Lauren Martin and Annie Hill, “Debunking the Myth of ‘Super Bowl Sex Trafficking’: Media Hype or Evidenced-Based Coverage,” *Anti-Trafficking Review*, no. 13 (September 26, 2019): pp. 13-29, <https://doi.org/10.14197/atr.201219132>.

⁵ Rachel White, “Research Debunks Myth of Super Bowl Sex Trafficking, Improves Media Narrative,” *UT News* (University of Texas, Austin, October 30, 2019), <https://news.utexas.edu/2019/10/30/research-debunks-myth-of-super-bowl-sex-trafficking-improves-media-narrative/>.

time around the championship game at a similar rate as the rest of the time, despite increased policing.⁶ The scale of the Super Bowl trafficking rumor comes at a cost to both public safety and municipal budgets. Trafficking hysteria around the Super Bowl causes host cities to increase police presence and, as a result, arrests - but rarely does that result in the prosecution of trafficking crimes. In 2019, sting operations at the Super Bowl game in Atlanta engaged 40 different law enforcement agencies.⁷ When questioned about the result of this increased vigilance, the Chief of Police confirmed that there were no trafficking-related arrests in the area connected to the event, nor did crime related to commercial sex increase.⁸

Heightened law enforcement presence and vigilance during the Super Bowl dominates resources and channels them into arresting consensual adult sex workers rather than individuals who are experiencing exploitation, due to the overwhelmingly common conflation between the two. Already vulnerable populations such as immigrants, members of the LGBTQ community, people experiencing homelessness, and other marginalized identities are more likely to be profiled by law enforcement as sex workers. These communities are also at heightened risk to experience adverse consequences from contact with the criminal justice system.⁹

In anticipation of Super Bowl LVI at SoFi Stadium in Inglewood, Los Angeles County, California, the following publication is an examination of the political and legal landscape around sex work and human trafficking in the United States and how these policies contribute to the trafficking myth surrounding the Super Bowl and other major sporting events. The report will provide a legislative overview on laws relating to sex work and trafficking around the country, with a particular focus on California. It will then look at the impact of laws and policies locally and globally, provide a brief overview of arrest rates in California, draw conclusions from the evidence presented, and make future policy recommendations.

II. State & Federal Legislative Responses

A. State Laws

Informed by the experiences of community members and policy recommendations from human rights organizations such as the World Health Organization, Amnesty International, GAATW, and the ACLU, legislators across the country have introduced bills to decriminalize sex work in recent years. Despite these efforts, no jurisdiction in the United States has decriminalized prostitution to date. Sex work is legalized in select rural counties in Nevada, allowing sex workers to work in licensed brothels under certain parameters.

⁶ Julie Ham, "What's the Cost of a Rumour" (The Global Alliance Against Traffic in Women, October 17, 2011), <http://gaatw.org/publications/WhatstheCostofaRumour.11.15.2011.pdf>.

⁷ Colin Kalmbacher, "Experts Dismiss Super Bowl Sex Trafficking Myth," Law & Crime (Law & Crime, February 2, 2019), <https://lawandcrime.com/sports/misinformation-used-to-increase-policing-experts-dismiss-the-super-bowl-sex-trafficking-myth/>.

⁸ Michael King, "Atlanta Police Chief Pushes Back on Reports of Sex Trafficking Arrests," *11 Alive*, April 2, 2019, <https://www.11alive.com/article/sports/nfl/superbowl/atlanta-police-chief-pushes-back-on-reports-of-sex-trafficking-arrests/85-911e730c-e89b-401a-a004-3b63b168bc1b>.

⁹ "Sex Workers Organising for Change: Self-Representation, Community Mobilisation, and Working Conditions" (The Global Alliance Against Traffic in Women, 2018), <https://www.gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf>.

Sex worker rights advocates, service providers, and legislators have utilized multiple strategies to advance objectives, such as advocating for immediate decriminalization, creating or repealing specific statutes related to certain aspects of policing and sex work, and encouraging prosecutors to no longer pursue prostitution cases. In recent years, there has been a significant shift in legislative attitudes, prosecutorial approaches, and concrete policies regarding sex work. These changes have increasingly recognized the consequences of prohibiting prostitution for public health and safety, labor exploitation, and human rights. As a result, support for and notoriety of harm-reduction policies including immunity for sex workers who are victims or witnesses to a crime while working, the expansion of vacatur eligibility for survivors of trafficking, anti-discrimination bills for sex workers, and survivors seeking healthcare, and other sex work and trafficking policies have increased.

In light of shifting cultural perspectives on the criminal legal system and sex work specifically, there have been several recent notable achievements:

- Decriminalization bills have been introduced in Louisiana, Massachusetts, Rhode Island, New York, Vermont, New Hampshire, Missouri, and Oregon.¹⁰ The City Council of Burlington, Vermont unanimously approved a city resolution to decriminalize sex work.¹¹ Oregon voters may see a ballot measure in 2022 named the “Sex Worker Rights Act” which would repeal the state’s prostitution laws.¹²
- In response to increased public pressure, New York State and the city of Seattle, Washington repealed their respective loitering for the purpose of prostitution laws.¹³ These statutes allowed law enforcement to target and harass community members based on their physical appearance with impunity and disproportionately affected Black and Latinx transgender sex workers. The California legislature approved a bill during the 2021 legislative session that would repeal its loitering statute; that bill is currently awaiting the governor’s signature.¹⁴
- Law enforcement agencies and state legislatures are increasingly adopting policies prohibiting the use of condoms as evidence in prostitution cases at the distrust between sex workers and law enforcement and to end the legal dissuasion from the use of sexually transmitted infection (STI)

¹⁰ Note that some bills have been introduced in prior sessions; cited legislation is from the most recent session in which a decriminalization bill was introduced: H.B. 67, 2021 Leg., Reg. Sess. (La. 2021),

<http://www.legis.la.gov/legis/BillInfo.aspx?i=239860>; H. 1867, 192nd Gen. Ct., Reg. Sess. (Mass. 2021),

<https://malegislature.gov/Bills/192/H1867>; S. 771, 2021 Gen. Assemb., Jan. Sess. (R.I. 2021),

<http://webserver.rilin.state.ri.us/BillText/BillText21/SenateText21/S0771.pdf>; S. 3075 / A. 849, 2021-2022 Leg. Sess. (N.Y. 2021),

<https://www.nysenate.gov/legislation/bills/2021/S3075>; H. 630, 2022 Gen. Assemb., Reg. Sess. (Vt. 2022),

<https://legislature.vermont.gov/bill/status/2022/H.630>; H.B. 1614, 2016 Gen. Ct., Reg. Sess. (N.H. 2016),

http://gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=2642&sy=2016&sortoption=&txtsessionyear=2016&txtbillnumber=HB1614, H.B. 2338, 101st Gen. Assemb., 2nd Reg. Sess., (Mo. 2022)

<https://www.house.mo.gov/Bill.aspx?bill=HB2338&year=2022&code=R>; H.B. 3088, 2021 Leg., Reg. Sess. (Or. 2021),

<https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3088>.

¹¹ Staff Report, “Burlington City Council Approves Decriminalizing Prostitution,” *Sun Community News*, July 13, 2021,

<https://suncommunitynews.com/news/90509/burlington-city-council-approves-decriminalizing-prostitution/>.

¹² Full text available here: <http://oregonvotes.org/irr/2022/042text.pdf>.

¹³ S. 1351, 2021-2022 Leg. Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/S1351>; Seattle, Wash. C.B. 119807 (2020), <http://seattle.legistar.com/LegislationDetail.aspx?ID=4569520&GUID=A9C88B38-B61C-4954-8CF7-40EF4D881294>.

¹⁴ S.B. 357, 2021-2022 Leg., Reg. Sess. (Cal. 2021),

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB357.

prevention measures.¹⁵ California enacted a law prohibiting the use of condoms as evidence in 2019.¹⁶

- Several states, including Oregon, Utah, Montana, Vermont, and New Hampshire have recently passed laws granting immunity from arrest and prosecution to sex workers who report witnessing or experiencing violence.¹⁷ New York and Nebraska are currently considering similar bills, and Rhode Island had an immunity bill introduced in 2021.¹⁸ California was one of the first states to do so, in the same 2019 bill that prohibited the use of condoms as evidence.¹⁹
- Prosecutors in several major American cities, including Manhattan, Baltimore, and Philadelphia have publicly changed their policies to no longer prosecute certain prostitution crimes;²⁰ others have begun to dismiss open prostitution cases.²¹ The newly elected Manhattan District Attorney, Alvin Bragg, released a policy memo on his first day in office specifically listing prostitution as a crime that his office would not be prosecuting.²² Data in other parts of the country also show a degree of decreased arrest and conviction rates for prostitution and prostitution-related crimes over the past several decades.²³
- Police reform advocates support defunding Vice departments that target sex workers and clients, noting that vice efforts are unnecessary and often abusive.²⁴
- Nearly every state in the country now allows survivors of human trafficking to vacate, expunge, and/or seal prostitution or prostitution-related convictions that arose out of their exploitation. In recent years, many states have amended and expanded vacatur laws to make the process safer and

¹⁵ For example, NYPD announced a department policy to no longer collect condoms as evidence in 2014, and California adopted a law prohibiting condom possession use in prostitution-related crime prosecutions in 2019. See Christopher Robbins, “NYPD Will Stop Seizing Condoms From Sex Workers,” *Gothamist*, May 12, 2014, <https://gothamist.com/news/nypd-will-stop-seizing-condoms-from-sex-workers>.

¹⁶ S.B. 233, 2019-2020 Leg., Reg. Sess. (Cal. 2019),

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB233.

¹⁷ S.B. 596, 2019 Leg., Reg. Sess. (Or. 2019), <https://olis.oregonlegislature.gov/liz/2019R1/Measures/Overview/SB596>; H.B. 40, 2019 Leg., Gen. Sess. (Utah 2019); S.B. 233, 2019-2020 Leg., Reg. Sess. (Cal. 2019),

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB233; H.B. 520, 2021 Leg., 67th Reg.

Sess. (Mont. 2021), <https://leg.mt.gov/bills/2021/billhtml/HB0520.htm>; H. 18, 2021 Gen. Assemb., Reg. Sess. (Vt. 2021),

<https://legislature.vermont.gov/bill/status/2022/H.18>; H.B. 123, 2021 Gen. Ct., Reg. Sess. (N.H. 2021),

http://gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=93&sy=2021&sortoption=&txtsessionyear=2021&txtbillnumber=HB123.

¹⁸ S.B. 2233 / A.B. 255, 2021-2022 Leg. Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/S2233>; ; L.B. 7, 107th Leg., 1st Sess. (Neb. 2021), https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=43680; H.B. 5467, 2021 Gen. Assemb., Jan. Sess. (R.I. 2021), <http://webserver.rilin.state.ri.us/BillText/BillText21/HouseText21/H5467.pdf>.

¹⁹ S.B. 233, 2019-2020 Leg., Reg. Sess. (Cal. 2019),

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB233.

²⁰ Jonah E. Bromwich, “Manhattan to Stop Prosecuting Prostitution, Part of Nationwide Shift,” *New York Times*, April 21, 2021,

<https://www.nytimes.com/2021/04/21/nyregion/manhattan-to-stop-prosecuting-prostitution.html>; Julianna Battaglia, “Baltimore

will no longer prosecute drug possession, prostitution and other low-level offenses,” *CNN*, March 27, 2021,

<https://www.cnn.com/2021/03/27/us/baltimore-prosecute-prostitution-drug-possession/index.html>; Bobby Allyn, “After year one,

Philly DA Larry Krasner earns praise from reformers, scorn from victim advocates,” *Whyy*, February 5, 2019,

<https://why.org/articles/after-his-first-year-philly-d-a-larry-krasner-earns-praise-from-reformers-scorn-from-victim-advocates/>.

²¹ Press release, “Brooklyn District Attorney Eric Gonzalez Dismisses All Outstanding Prostitution-Related Warrants,” *Brooklyn District Attorney’s Office*, January 29, 2021,

<http://brooklynda.org/2021/01/29/brooklyn-district-attorney-eric-gonzalez-dismisses-all-outstanding-prostitution-related-warrants/>.

²² Full policy memo available here:

<https://www.manhattanda.org/wp-content/uploads/2022/01/Day-One-Letter-Policies-1.03.2022.pdf>.

²³ Howard N. Snyder, “Arrests in the United States, 1990-2020,” *U.S. Department of Justice*, pg. 4,

<https://bjs.ojp.gov/content/pub/pdf/aus9010.pdf>.

²⁴ Stephen Engleberg, “How NYPD’s Vice Unit Got Prostitution Policing All Wrong,” *ProPublica*, May 3, 2021,

<https://www.propublica.org/article/how-nypds-vice-unit-got-prostitution-policing-all-wrong>.

more accessible.²⁵ New York and New Jersey recently expanded their vacatur laws to allow courts to provide criminal record relief for a range of convictions resulting from exploitation, beyond just those for prostitution.²⁶ California's legislature passed a bill in 2021 greatly improving its vacatur law by eliminating economic barriers to seeking vacatur, allowing survivors to petition for relief at any time after their exploitation, and improving the record sealing process, among other things.²⁷

- Various other legislation is being proposed and passed across the country that affects the well-being of sex workers on a smaller scale.²⁸

B. FOSTA/SESTA and Online Regulation

Despite this political and cultural shift, legislation proposed and passed on both the federal and state level in recent years has also endangered sex workers' rights and safety. The Trump Administration passed the Stop Enabling Sex Traffickers Act (SESTA) / Fighting Online Sex Trafficking Act (FOSTA) in 2018. SESTA/FOSTA is a federal law enacted to address online trafficking concerns by limiting the protections for online platforms under Section 230 of the Communications Decency Act (CDA)²⁹ and creating legal liability for websites that host content advertising sexual services.

The fallout from SESTA/FOSTA is significant and well-documented. Sex workers no longer have access to the safety net provided by websites, which had significantly reduced the risk that workers faced. Online platforms allowed sex workers to advertise and screen clients for safety and verify their identity before proceeding.³⁰ Under SESTA/FOSTA, sex workers are forced to engage in street-based sex work, increasing their vulnerability to violent crime and trafficking.³¹ Law enforcement agencies concerned with intercepting trafficking operations no longer have access to internet listings to identify potential victims.

²⁵ For example, in 2021 Illinois, Washington, and Connecticut all passed bills improving vacatur for trafficking survivors. *See* S.B. 2136, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021), <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2136&GAID=16&DocTypeID=SB&SessionID=110&GA=102>; S.B. 5180, 67th Leg., Reg. Sess. (Wash. 2021), <https://app.leg.wa.gov/billsummary?BillNumber=5180&Year=2021&Initiative=false>; H.B. 6657, Gen. Assemb., Jan. Sess. (Conn. 2021), https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB06657&which_year=2021.

²⁶ S.B. 674 / A.B. 459, 2021-2022 Leg. Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/s674>; S.B. 3433 / A.B. 5322, 219th Leg., 2nd Ann. Sess. (N.J. 2021), <https://www.njleg.state.nj.us/bill-search/2020/A5322>; *see also*: <https://citizenactionny.org/2021/11/16/new-york-state-becomes-a-national-leader-in-providing-survivors-of-trafficking-real-justice/>

²⁷ A.B. 262, 2021-2022 Leg., Reg. Sess. (Cal. 2021), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB262.

²⁸ A bill limiting the use of arrest photos on law enforcement social media pages passed in California with a similar bill being proposed in New Hampshire, *see* A.B. 1475, 2021-2022 Leg., Reg. Sess. (Cal. 2021) https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1475 and H.B. 125, 2021 Gen. Ct., Reg. Sess. (N.H. 2021), http://www.gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=0092&sy=2021&txtsessionyear=2021&txtbillnumber=hb125&sortoption=&q=1; Rhode Island legislators considered a patient bill of rights that protected patients from discrimination, including on the basis of their source of income or profession, *see* H. 5464, 2021 Gen. Assemb., Jan. Sess. (R.I. 2021), <http://webserver.rilin.state.ri.us/BillText/BillText21/HouseText21/H5464.pdf>; Rhode Island passed a bill creating a study commission to research and provide recommendations on reforming prostitution laws, *see* H. 5250, 2021 Gen. Assemb., Jan. Sess. (R.I. 2021), <http://webserver.rilin.state.ri.us/BillText/BillText21/HouseText21/H5250.pdf>.

²⁹ “47 U.S. Code § 230,” Legal Information Institute (Legal Information Institute, 2018), <https://www.law.cornell.edu/uscode/text/47/230>.

³⁰ Aja Romano, “A New Law Intended to Curb Sex Trafficking Threatens the Future of the Internet as We Know It,” *Vox*, July 2, 2018, <https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom>.

³¹ Jeanne L Allert, “After FOSTA-SESTA” (Institute for Shelter Care, 2018), <https://thesamaritanwomen.org/wp-content/uploads/2020/02/After-SESTA-FOSTA.pdf>.

The Department of Justice authored a letter to the House of Representatives Judiciary Committee in February of 2018 expressing concern about the bill, citing the heightened legal standard prosecutors would have to meet under the law’s amendment in trafficking cases under the “participation in a venture” definition, as well as the law’s violation of the Constitution’s Ex Post Facto Clause.³² Most recently, social media platforms have censored and demonetized any form of sexual content, destroying a vital source of income for many content creators earning their living online.³³

As a result, the Woodhull Freedom Foundation filed a federal lawsuit in the U.S. District Court for the District of Columbia against the United States and then-Attorney General William Barr, challenging the constitutionality of the law on behalf of multiple plaintiffs.³⁴ The district court denied the challenge for lack of standing, but Woodhull successfully appealed that decision and the Court of Appeals remanded the case back to the district court for further proceedings that have yet to begin.³⁵

C. An Attempt at Prohibition

With increased awareness around the benefits of decriminalization of sex work, there has also been a counter-movement advocating for Nordic Model legislation.³⁶ The Nordic Model, also called the Entrapment Model, the Swedish Model, and the Arrest First Model seeks to “end demand” for commercial sex by repealing laws that criminalize the sale of sex while maintaining criminal penalties for purchasing, promoting, or otherwise aiding prostitution.³⁷ Nordic Model and similar bills have been proposed in New York, Maine, and Massachusetts in the 2021-22 legislative session.³⁸ Using the same reasoning, Texas passed a bill in 2021 increasing the criminal penalties for purchasers from a misdemeanor to a felony.³⁹ Texas was the first state to do so, and other states have begun to introduce similar bills in 2022, including Illinois and Florida.⁴⁰

³² Stephen E Boyd, “US Department of Justice Legislative Affairs,” *US Department of Justice Legislative Affairs*, 2018, <https://s3.documentcloud.org/documents/4390361/Views-Ltr-Re-H-R-1865-Allow-States-and-Victims.pdf>.

³³ Jennifer Musto et al., “Anti-Trafficking in the Time of FOSTA/Sesta: Networked Moral Gentrification and Sexual Humanitarian Creep,” *Social Sciences* 10, no. 2 (February 8, 2021): p. 58, <https://doi.org/10.3390/socsci10020058>; Danielle Blunt and Ariel Wolf, “Erased: The Impact of Fosta-Sesta and the Removal of Backpage on Sex Workers,” *Anti-Trafficking Review*, no. 14 (April 27, 2020): pp. 117-121, <https://doi.org/10.14197/atr.201220148>; Erin Tichenor, “I’ve Never Been so Exploited’: The Consequences of Fosta-Sesta in Aotearoa New Zealand,” *Anti-Trafficking Review*, no. 14 (April 27, 2020): pp. 99-115, <https://doi.org/10.14197/atr.201220147>; Emily J Born, “Too Far and Not Far Enough: Understanding the Impact of FOSTA,” *New York University Law Review* 94, no. 6 (December 2019): pp. 1623-1653, <https://www.nyulawreview.org/wp-content/uploads/2019/12/NYULawReview-94-6-Born.pdf>; Isabelle T Lee, “Bound Together: One Year Later, FOSTA-SESTA Throws Sex Workers Back into the Fire,” *Bitch Media*, December 17, 2019, <https://www.bitchmedia.org/article/fosta-sesta-throws-sex-workers-into-fire>.

³⁴ Petitioner’s complaint available at:

https://www.woodhullfoundation.org/wp-content/uploads/2018/06/Woodhull-Freedom-Foundation-v.-United-States_Redacted.pdf

³⁵ “Woodhull Wins FOSTA Appeal,” Woodhull Freedom Foundation, January 24, 2020,

<https://www.woodhullfoundation.org/2020/01/24/woodhull-wins-fosta-appeal/>.

³⁶ Maine’s governor vetoed a proposed end demand bill, see L.D. 1592, 130th Leg., 1st Spec. Sess. (Me. 2021), http://legislature.maine.gov/legis/bills/display_ps.asp?LD=1592&snum=130. Similar bills were introduced in New York and Massachusetts; see S. 6040, 2021-2022 Leg. Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/S6040>; S. 940, 192nd Gen. Ct., Reg. Sess. (Mass. 2021), <https://malegislature.gov/Bills/192/S940>.

³⁷ Sebastian Kohn, “The False Promise of ‘End Demand’ Laws,” Open Society Foundations, June 2, 2017,

<https://www.opensocietyfoundations.org/voices/false-promise-end-demand-laws>.

³⁸ See footnote 36.

³⁹ H.B. 1540, 87th Leg., 3rd Reg. Sess. (Tex. 2021),

<https://capitol.texas.gov/BillsLookup/History.aspx?LegSess=87R&Bill=HB1540>.

⁴⁰ H.B. 4592, 102nd Gen. Assemb., Spring Sess. (Ill. 2022),

<https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4592&GAID=16&DocTypeID=HB&SessionID=110&GA=102>; H.B. 521, 2022 Leg., Reg. Sess. (Fla. 2022), <https://www.flsenate.gov/Session/Bill/2022/521>.

Proponents of this model advocate for the prohibition of prostitution. They hope that criminalizing the purchase of sex will eliminate demand and put an end to sex work altogether. Ignoring the voices of sex workers who advocate for safety, it views sex work as inherently exploitative, regardless of circumstance. Prohibitionists also fail to take into account evidence showing the negative consequences of attempts to end demand. Researchers have found that the Nordic Model not only fails to meet its goal of eliminating commercial sex, but it also ultimately puts sex workers at greater risk of violence and exploitation.⁴¹ New York public defender and one-time Manhattan District Attorney candidate Eliza Orlins noted that “one of the objectives of this Nordic prohibitionist model is to make the sex industry *so dangerous and so violent* that it ends.”⁴²

The decriminalization of sex work repeals all laws criminalizing the sale and purchase of sex by consenting adults, while sexual exploitation and trafficking of any kind remain illegal. This model, in contrast to criminalization and the Nordic Model, allows law enforcement resources to be used more effectively, targeting exploitation and abuse in all labor sectors rather than consensual sex work. Decriminalization increases public safety, makes more resources available to combat trafficking, and ensures that consenting adults are not needlessly entangled in the criminal legal system, forced to exist in criminalized spaces that increase vulnerability to violence and exploitation.

III. Sex Work and Intersectionality

Research on sex work and related policies indicates that the majority of laws criminalizing sex workers, their clients, and their peers fail to address the underlying structural and systemic conditions of poverty, economic disparities, xenophobia, and racial and gender injustice.⁴³ These factors play a significant role in determining who engages in sex work under what conditions and the outcome, and are critical to crafting effective policy responses. Here we examine different structural analyses that can be used to understand how to make sex work safer, healthier, and more transparent, and to more effectively prevent trafficking in commercial sex.

A. Human Trafficking Prevention

Research from around the world routinely shows that, as with any industry, criminalization encourages organized crime.⁴⁴ In the case of sex work and trafficking, criminalization pushes sex workers into more secluded and dangerous spaces to avoid law enforcement, exposing them to increased risk of assault, fraud, control, and lack of freedom, which in turn makes them more vulnerable to sexual exploitation and trafficking.⁴⁵ A study of clients of sex workers in the U.S. and U.K. revealed that clients encountering sex

⁴¹ Policy briefing, “The Impact of End Demand’ Legislation on Women Sex Workers”, *NSWP*, 2019, https://www.nswp.org/sites/nswp.org/files/pb_impact_of_end_demand_on_women_sws_nswp_-_2018.pdf.

⁴² Michael Ellsberg, “Manhattan DA Candidate Eliza Orlins Has a Plan to Make New York City Safer for Sex Workers,” *The Daily Beast*, January 27, 2021, <https://www.thedailybeast.com/manhattan-da-candidate-eliza-orkins-has-a-plan-to-make-new-york-city-safer-for-sex-workers>.

⁴³ Ine Vanwesenbeeck, “Sex Work Criminalization Is Barking up the Wrong Tree,” *Archives of Sexual Behavior* 46, no. 6 (May 2017): pp. 1631-1640, <https://doi.org/10.1007/s10508-017-1008-3>.

⁴⁴ Ronald Weitzer, “New Directions in Research on Human Trafficking,” *The ANNALS of the American Academy of Political and Social Science* 653, no. 1 (2014): pp. 6-24, <https://doi.org/10.1177/0002716214521562>.

⁴⁵ Di Tommaso et al., “As Bad as It Gets.”

workers that seemed to be experiencing exploitation would like to have reported this to law enforcement, and would in a decriminalized environment.⁴⁶

Where and when sex work is decriminalized and workers and clients can report abuse and exploitation, trafficking has declined. The Netherlands and Germany have varied degrees of legalized and regulated sex work, and each experienced a documented decline in trafficking, pimping, and exploitation under legalization because of increased enforcement capability.⁴⁷ In New Zealand, decriminalization increased sex workers' trust and ability to call on police to push back against exploitative managers and ensure safe working conditions.⁴⁸ New Zealand allows workers to perform labor independently, outside the confines of a management structure, in contrast to legalization and regulation seen elsewhere which still allows for the exploitation of sex workers as employees. Under decriminalization, sex workers are still subject to health and safety regulations as well as tax obligations, but they have the greatest access to labor rights.

B. Human Rights

In 2017, a study out of Utrecht University identified a shift towards more repressive and punitive policies regulating sex work and observed that this approach subjects sex workers to a myriad of controls and regulations that prevent sex work from becoming “worker-controlled, non-abusive, and non-exploitative.”⁴⁹ These policies fail to meet the needs of sex workers and trafficking survivors alike and they ignore criminalization as the structural source of risk inherent in the work.⁵⁰ A study on levels of abuse, freedom of movement, and access to medical care among exploited women found severe implications for the well-being of trafficked people and sex workers who are denied human rights, agency, and access to medical care and contraception. Criminalization of both supply and demand pushes workers into more secluded and marginalized spaces, decreasing access to resources and safety strategies across the sex industry for both those who are exploited and those who do sex work as a result of choice.⁵¹

The decriminalization of sex work in New Zealand under the Prostitution Reform Act (PRA) in 2003 has significantly increased sex workers' rights. The PRA provides critical protections in the workplace for both independent sex workers and brothel-based workers, which has reduced exploitation, increased agency, and mitigated stigmatization of workers.⁵² Decriminalization has also shifted the balance of power between police and sex workers by removing the risk of arrest. As a result, sex workers experience significantly reduced levels of violence and improved police relations. This is particularly true for

⁴⁶ Teela Sanders, Barbara G. Brents, and Chris Wakefield, “Paying for Sex in a Digital Age: US and UK Perspectives,” Taylor and Francis Group, March 17, 2020, <https://www.taylorfrancis.com/books/mono/10.4324/9780429454370/paying-sex-digital-age-teela-sanders-barbara-brents-chris-wakefield>.

⁴⁷ Daalder, Annelies, *Prostitution in the Netherlands in 2007*. The Hague: Ministry of Justice, 2007. <https://www.government.nl/documents/reports/2015/06/01/prostitution-in-the-netherlands-in-2014>. See also Department of State, *Trafficking in Persons Report*, 2005.

⁴⁸ Armstrong, “From Law Enforcement to Protection?”

⁴⁹ *Id.*

⁵⁰ *Id.*; Lucy Platt et al., “Associations between Sex Work Laws and Sex Workers' Health: A Systematic Review and Meta-Analysis of Quantitative and Qualitative Studies.” *PLOS Medicine* 15, no. 12 (December 11, 2018): pp. 1–54. <https://doi.org/10.1371/journal.pmed.1002680>.

⁵¹ Maria L. Di Tommaso et al., “As Bad as It Gets: Well-Being Deprivation of Sexually Exploited Trafficked Women,” *European Journal of Political Economy* 25, no. 2 (2009): pp. 143-162, <https://doi.org/10.1016/j.ejpoleco.2008.11.002>.

⁵² Gillian Abel and Melissa Ludeke, “Brothels as Sites of Third-Party Exploitation? Decriminalisation and Sex Workers' Employment Rights,” *Social Sciences* 10, no. 1 (December 24, 2020): pp. 3-15, <https://doi.org/10.3390/socsci10010003>, 13.

street-based workers, the group most vulnerable to abuse and violence.⁵³ Ultimately, empirical research shows that criminalization actively harms sex workers' rights and decriminalization enhances and ensures access to health and safety.

C. Public Health

One of the most immediate and severe impacts of the repressive policing of sex work is poor health outcomes and barriers to accessing healthcare. Sex workers are unlikely to seek or have access to medical and mental health services under criminalization due to fear of arrest, violence, and discrimination. A 2018 meta-analysis out of the Johns Hopkins School of Public Health conclusively found that repressive policing of sex work increases the likelihood of sex workers to experience sexual and physical violence, contract HIV or other STIs, and engage in condomless sex.⁵⁴ Risk of HIV/STI transmission is two-to-four times greater among sex workers who experience arrest; have sex with police officers to avoid arrest; have condoms, needles, or syringes confiscated by the police; or have been subject to police raids.⁵⁵ Evidence shows that criminally enforced regulatory models also create major disparities within sex worker communities, possibly enabling access to safer conditions for some but excluding the large majority who remain under a system of criminalization, including trans women, cis men, people who use drugs, migrant populations, and often sex workers operating in outdoor environments, all of whom are at increased risk of HIV in many settings.⁵⁶

Conversely, both international and U.S.-based studies have shown that evidence-based, rights-affirming policies towards sex work are central to an effective HIV strategy. Laws governing sex work are structural determinants of the spread of HIV. Decriminalization has been shown to reduce HIV transmission between 33-46% and mitigate risk-taking behavior when accompanied by sex worker-led interventions.⁵⁷ Though rates of HIV incidence have been slowing across the globe, there are persistent infection rates among sex worker communities.⁵⁸ When Rhode Island decriminalized indoor sex work from 2003-2009, STI rates decreased by 39%, in large part because sex workers could be more risk-averse in a decriminalized environment and are more likely to seek medical care.⁵⁹ A 2014 study on the structural determinants of HIV infections predicts that of all policy shifts, the decriminalization of sex work would have the greatest impact on HIV epidemics around the world, decreasing infections by 33-46%.⁶⁰

D. Intersectional Feminism

Sex work is a hotly contested and divisive topic among those who advocate for gender justice. Some self-described feminists believe that sex work is inherently exploitative. This perspective, like that driving

⁵³ Lynzi Armstrong, "From Law Enforcement to Protection? Interactions between Sex Workers and Police in a Decriminalized Street-Based Sex Industry: Table 1," *British Journal of Criminology* 57 (February 17, 2016): p. 583 <https://doi.org/10.1093/bjc/azw019>.

⁵⁴ Platt et al., "Associations between sex work laws," 1.

⁵⁵ Kate Shannon et al., "Global Epidemiology of HIV among Female Sex Workers: Influence of Structural Determinants," *The Lancet* 385, no. 9962 (July 22, 2015): p. 58, [https://doi.org/10.1016/s0140-6736\(14\)60931-4](https://doi.org/10.1016/s0140-6736(14)60931-4).

⁵⁶ *Id.* at 43.

⁵⁷ Shannon et al., "Prevalence and Structural Correlates of Gender Based Violence".

⁵⁸ Carrie E. Lyons et al., "The Role of Sex Work Laws and Stigmas in Increasing HIV Risks among Sex Workers," *Nature Communications* 11, no. 1 (2020): pp. 1-10, <https://doi.org/10.1038/s41467-020-14593-6>.

⁵⁹ Scott Cunningham and Manisha Shah, "Decriminalizing Indoor Prostitution: Implications for Sexual Violence and Public Health," *The Review of Economic Studies* 85, no. 3 (December 20, 2017): pp. 1683-1715, <https://doi.org/10.1093/restud/rdx065>.

⁶⁰ Shannon, "Global Epidemiology of HIV," 67.

the trafficking hysteria around the Super Bowl, usually pursues punitive criminal legal strategies to try and put an end to sex work. Others increasingly view sex work as a means for financial, sexual, and cultural freedom and empowerment. Carol Leigh described this evolution as “a moral shift that emphasizes sex work as an act of empowerment and reclamation.”⁶¹ Taking into account the nuance of feminist approaches to labor rights and economic independence as well as the intersectional nature of the sex worker rights movement (which brings up questions about racial, economic, and gender identity justice, which are briefly discussed below), sex work is recognized as an affirmation of the feminist principles of equity, diversity, autonomy, and human rights.⁶²

Sex workers suffer a disproportionate amount of gender-based violence, yet research conclusively finds that an increase in repressive policing towards sex work heightens, rather than mitigates, this violence. Much abuse is perpetuated by law enforcement themselves.⁶³ A 2009 study surveying 237 cisgender and transgender female-identifying sex workers found that 57% experienced some kind of gender-based violence. For street-based sex workers, 100% experienced verbal harassment and 67% were beaten or physically assaulted.⁶⁴ Violence against sex workers is incredibly gendered, both on an individual and systemic scale. Intersectional feminists recognize that cross-sections of marginalized identities create additional risks for those who sit at those intersections: successful and comprehensive sex work policy reform will only truly address the needs of sex workers when it does the same.

E. LGBTQ Rights

The criminalization of sex work disproportionately affects LGBTQ-identifying people, who are already especially susceptible to violence and harassment when entangled in the criminal legal system. In 2014, the National LGBTQ Taskforce recommended the decriminalization of adult consensual sex work as a means to affirming the human rights of their community members.⁶⁵ LGBTQ individuals are uniquely impacted by sex work laws. Participating in street-based economies is critical to the survival of many community members, particularly LGBTQ youth and transgender women of color who are rejected by family members and experience “disproportionate rates of violence, homelessness, and discrimination in employment, housing, and education.”⁶⁶

Sex work laws are often employed not to protect public safety, but rather to profile, harass, and arrest individuals on the basis of race and gender expression. The impact of these laws disproportionately harms transgender women of color and the LGBTQ community as a whole.⁶⁷ Transgender individuals are ten times more likely to engage in sex work than cisgender women. 13% of transgender people who

⁶¹ Mesce, Gabriella, "Sex Work Decriminalization and Feminist Theory" (2020). Senior Theses. P. 7. https://scholarcommons.sc.edu/senior_theses/365.

⁶² *Id.*

⁶³ Shannon et al., “Prevalence and Structural Correlates”, 5; See Platt et al., “Associations between sex work laws”; Kathleen N Deering et al., “A Systematic Review of the Correlates of Violence Against Sex Workers,” *American Journal of Public Health* 104, no. 5 (May 2014): pp. 42-53.

⁶⁴ Shannon et al., “Prevalence and Structural Correlates”, 4.

⁶⁵ “Sex Work Policy Recommendations” (National LGBTQ Taskforce, October 2014),

https://www.thetaskforce.org/wp-content/uploads/2014/10/TF_sexworkpolicy_recommendations.pdf.

⁶⁶ “LGBT Rights Organizations Join Amnesty International in Call to Decriminalize Sex Work.” *Lambda Legal*, August 20, 2015. Lambda Legal. https://www.lambdalegal.org/blog/20150820_decriminalize-sex-work.

⁶⁷ *Id.*

experience family rejection have done sex work.⁶⁸ Whether or not LGBTQ individuals participate in sexual labor, they are frequently profiled, harassed, and incarcerated as sex workers, perpetuating violence at the hands of law enforcement and the public.⁶⁹ Criminalization and stigma result in alarmingly high rates of harassment and physical and sexual abuse perpetrated against LGBTQ community members. A 2009 study conducted by the University of California Irvine found that 59% of transgender people in California men's prisons report having experienced sexual assault while in custody.⁷⁰

F. Racial Justice

People of color are the primary subjects of violence against, and prosecution of, individuals perceived as sex workers.⁷¹ Due to stigma and fear of arrest, crimes committed against sex workers are rarely reported and when they are, such reports are not taken seriously. This dynamic is heightened when crimes are perpetrated against people of color because cultural conditioning has primed society to both expect and devalue violence within Black, Indigenous, and People of Color (BIPOC) communities.⁷² Perpetuating this narrative, and as a result, Black women selling sexual services are disproportionately targeted by violent criminals.⁷³ Police are often perpetrators of violence themselves, or they turn a blind eye to violent crime, even labeling the crimes as "NHI" ("no humans involved").⁷⁴ 23% of Black transgender individuals will experience physical or sexual assault by police because they are perceived as transgender and involved in sex work.⁷⁵

Recent findings by researchers at the National Institute of Justice found that 62% of national sex trafficking prosecutions are Black men and that this bias constitutes a serious violation of human rights.⁷⁶ Racial disparities in the arrest and sentencing of those involved in sex work stem from 1) the systemic discrimination in the United States criminal legal system that targets communities of color for low-level crimes; 2) intersectional discrimination against people of color and transgender and gender-nonconforming individuals in traditional labor markets that limits their access to the same

⁶⁸ Jaime M Grant, Lisa A Mottet, and Justin Tanis, "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey" (National Center for Transgender Equality, 2011),

https://transequality.org/sites/default/files/docs/resources/NTDS_Exec_Summary.pdf.

⁶⁹ Richard Saenz, Kara Ingelhart, and Andrea J Ritchie, "A Report by the National LGBT/HIV Criminal Justice Working Group" (Lambda Legal, May 9, 2018),

https://www.lambdalegal.org/sites/default/files/publications/downloads/the_impact_of_the_trump_administrations_federal_criminal_justice_initiatives_on_lgbtq_people_communities_and_opportunities_for_local_resistance.pdf.

⁷⁰ Valerie Jenness, "Transgender Inmates in California's Prisons: An Empirical Study of a Vulnerable Population" (Irvine, CA: UC Irvine, Center for Evidence-Based Corrections, 2009).

⁷¹ Jasmine Sankofa, "From Margin to Center: Sex Work Decriminalization Is a Racial Justice Issue," *Amnesty International*, December 12, 2016,

https://www.amnestyusa.org/from-margin-to-center-sex-work-decriminalization-is-a-racial-justice-issue/#_ftn1.

⁷² Nazgol Ghandnoosh, "Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies" (The Sentencing Project, September 3, 2014),

<https://www.sentencingproject.org/publications/race-and-punishment-racial-perceptions-of-crime-and-support-for-punitive-policies/>.

⁷³ Jasmine Philips Sankofa, "Mapping the Blank: Centering Black Women's Vulnerability to Police Sexual Violence to Upend Mainstream Police Reform," *Howard Law Journal*, September 1, 2016,

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2828422

⁷⁴ Zachary Wigon, "The L.A.P.D. Didn't Catch an Alleged Serial Killer For 30 Years. Is It Because the Victims Were Black?," *Vanity Fair*, December 18, 2014, <https://www.vanityfair.com/hollywood/2014/12/tales-of-the-grim-sleeper-nick-broomfield>.

⁷⁵ Sankofa, "From Margin to Center".

⁷⁶ Williamson K.G., Marcus A. (2017) Black Pimps Matter: Racially Selective Identification and Prosecution of Sex Trafficking in the United States. In: Horning A., Marcus A. (eds) Third Party Sex Work and Pimps in the Age of Anti-trafficking. Springer, Cham. https://doi.org/10.1007/978-3-319-50305-9_9

economic opportunities and relief structures available to white and cisgender individuals;⁷⁷ and 3) the focus on abolishing commercial sex rather than examining the structural inequality that drives the need for sexual labor, putting the onus on individuals rather than social structures to address poverty, stigmatization, and racial and gender-based violence.⁷⁸

IV. Trafficking vs. Sex Work: Policy Responses and Rhetoric

Sex work occurs when consenting adults choose to offer or purchase sexual services in exchange for something of value, usually money. Human trafficking, conversely, is when an individual or group uses force, fraud, or coercion to compel another into some kind of labor, including commercial sex.⁷⁹ The rhetorical shift away from prosecuting the sale of sex in the United States has been countered by a push to conflate sex work with human trafficking for the purposes of commercial sex. Conflation increasingly influences the laws and policies that anti-trafficking organizations operate under, to the detriment of both sex workers and survivors of human trafficking.

Despite devoting an enormous amount of resources to fighting trafficking, the United States has consistently failed to develop adequate resources and policies for survivors, at least partially due to a hyper-focus on trafficking for commercial sex and conflation with prostitution across the globe.⁸⁰ Looking at rates of human trafficking worldwide, the International Labor Organization (ILO) found that 22% of trafficking cases in 2012 involved commercial sex, while 10% were state-imposed labor, and 68% were forced labor exploitation, including agricultural, domestic, construction work, and more. Yet out of the 5,700 trafficking convictions in 2013, fewer than 500 (10%) were for human trafficking outside of commercial sex.⁸¹ In the United States, advocates have noted that when labor trafficking cases are reported to U.S. law enforcement, they often fail to investigate or prosecute. In 2018, only 4% of trafficking prosecutions in the U.S. involved labor trafficking primarily, while 96% of resources were devoted to sex trafficking prosecutions.⁸² We can only assume, and accounts from service providers confirm, that the vast majority of human trafficking survivors in other industries including construction, domestic labor, agriculture, textiles, and more, go undetected while we funnel anti-trafficking funds into arresting consensual adult sex workers.

This misunderstanding not only leaves vulnerable people unprotected and wastes law enforcement resources, its harms compound, as the narrative reinforces a system of inequality that is complicit in laying the groundwork for trafficking in the first place. The common trope of an underage (and usually white) girl forced into prostitution by a male pimp obscures the socio-cultural context of poverty,

⁷⁷ Erin Fitzgerald, MPA, Sarah Elspeth Patterson, M.Ed., Darby Hickey, et al., “Meaningful Work: Transgender Experiences in the Sex Trade,” National Center for Transgender Equality, December 2015: 16, https://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf.

⁷⁸ Vanwesenbeeck, “Sex Work Criminalization.”

⁷⁹ Any commercial sexual activity involving a minor, even without the use of force, fraud, or coercion, is considered trafficking as underage individuals are unable to consent under law.

⁸⁰ Spencer Pennybacker, “The Harmful Prioritization of ‘Sex Trafficking’ in U.S. Anti-Trafficking Discourse,” *Union College* (2021), <https://digitalworks.union.edu/cgi/viewcontent.cgi?article=3520&context=theses>.

⁸¹ *Human Trafficking Is All Around You*, TED, 2015,

https://www.ted.com/talks/nyoy_thrupkaew_human_trafficking_is_all_around_you_this_is_how_it_works?language=en.

⁸² “Trafficking in Persons Report” (Office to Monitor and Combat Trafficking in Persons, June 2018), 516-17. <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>.

structural inequality, migration barriers, and racism, and how these systems feed into all forms of labor exploitation.⁸³

A. A History of Conflation and the Anti-Trafficking Industrial Complex

The first piece of federal anti-trafficking legislation passed in the United States was the Mann Act of 1910, also known as the White-Slave Traffic Act. The Mann Act was born in the midst of a moral panic over alleged immigrant-run prostitution rings across the country. It was believed that immigrant women were being brought to the United States for sexual slavery, while immigrant men lured American women into prostitution (or ‘white slavery’).⁸⁴ The law prohibited the transport of any woman or girl across state lines for prostitution, debauchery, or any other “immoral purpose.” In practice, the law was not used to combat trafficking but rather to target and criminalize interracial couples and immigrants,⁸⁵ cloaking discrimination in the more acceptable sentiment of anti-trafficking advocacy.⁸⁶ The Mann Act was never repealed but was amended several times to reflect a more explicitly anti-trafficking sentiment.⁸⁷

Today, the same moralistic trafficking fervor is used to the detriment of consensual adult sex workers and human trafficking survivors in the United States and abroad. In 2000, the United States passed a massive and comprehensive human trafficking act known as the Trafficking Victims Protection Act (TVPA). Three years later, then-President George W. Bush pledged \$50 million to support anti-trafficking organizations. The campaign created massive financial incentives for state, local, and even national governments and organizations to inflate rates of exploitation and create programs to “rescue victims of a globally syndicated criminal human trafficking ring.”⁸⁸

Researchers note that even though anti-trafficking efforts routinely fail to drum up the anticipated numbers of prosecutions and victims of exploitation,⁸⁹ each TVPA reauthorization calls for and eventually grants additional funding, resources, and the expansion of surveillance technologies to combat the proliferation of trafficking that is neither confirmed nor understood both in the US and abroad.⁹⁰ In an interview in May 2013, Michael Horowitz, a fellow at the Hudson Institute who led efforts to pass the original TVPA, said that the anti-trafficking movement has become more about securing research grants than protecting victims. “Now it’s just one big federal entitlement program,” he said, “and everybody is more worried about where they’re going to get their next grant.”⁹¹

⁸³ *Human Trafficking Is All Around You*, TED, 2015.

⁸⁴ Eric Weiner, “The Long, Colorful History of the Mann Act,” NPR (NPR, March 11, 2008), <https://www.npr.org/templates/story/story.php?storyId=88104308>.

⁸⁵ The most famous example of this was the trial of Jack Johnson, African-American heavy-weight boxing champion, who was prosecuted and convicted under the Mann Act for traveling across state lines with his white girlfriend in 1913. See “The Mann Act,” PBS (Public Broadcasting Service, 2022), <https://www.pbs.org/kenburns/unforgivable-blackness/mann-act/>.

⁸⁶ “Mann Act,” Legal Information Institute (Cornell Law School, July 2020), https://www.law.cornell.edu/wex/mann_act.

⁸⁷ *Id.*

⁸⁸ May Jeong, “‘You Won’t Believe What Happened’: The Wild, Unbelievable Saga of Robert Kraft’s Visit to a Strip Mall Sex Spa,” *Vanity Fair*, October 4, 2019, <https://www.vanityfair.com/news/2019/10/the-disturbing-saga-of-robert-kraft>.

⁸⁹ Anthony M. DeStefano, “Introduction,” in *The War on Human Trafficking: U.S. Policy Assessed* (Rutgers University Press, 2007), p. xi-xv.

⁹⁰ Claudia Cojocaru, “My Experience Is Mine to Tell: Challenging the Abolitionist Victimhood Framework,” *Anti-Trafficking Review*, no. 7 (September 30, 2016): pp. 12-38, <https://doi.org/10.14197/atr.20121772>; Jonathan Mendel and Kiril Sharapov, “Global Policy Journal” (Durham University, November 11, 2021), <https://www.globalpolicyjournal.com/blog/18/11/2021/expanding-circles-failure-rise-bad-anti-trafficking-and-what-do-about-it>.

⁹¹ Tom Ragan, “Nevada Movement Draws the Line on Human Trafficking,” *Las Vegas Review Journal*, May 29, 2013, <https://www.reviewjournal.com/local/local-las-vegas/nevada-movement-draws-the-line-on-human-trafficking/>.

The anti-trafficking programs competing for funding largely employ solutions rooted in the criminal legal system to combat “modern-day slavery.” This approach can unintentionally perpetuate the structural inequality that drives trafficking in the first place.⁹² Some have begun to call this phenomenon the anti-trafficking industrial complex or the anti-trafficking rehabilitation complex. Scholars have examined the mainstream anti-trafficking movement’s narrow and simplistic construction of victimhood in trafficking and sex work and found that conceptualizations obscure the agency of sex workers, painting them as victims in need of rescue, damaging both survivors of human trafficking and sex workers, placing them at high risk of structural violence and discrimination.⁹³ In its most extreme form, the abolitionist conflation of sex work and trafficking creates what Rambo-Reno terms secondary exploitation,⁹⁴ in which dehumanizing stereotypes contribute to the marginalization of sex workers and survivors, interrupting the development of resources and responses that center the voices of impacted individuals.⁹⁵

1. Human Trafficking Intervention Courts

New York’s Human Trafficking Intervention Courts (HTICs) are a demonstration of this dynamic. The courts were developed to funnel survivors of trafficking out of the traditional criminal justice system. They were the first of their kind, and similar diversion courts have been developed around the country in the years since. Though the courts inherently recognize the contradiction of treating survivors of human trafficking as criminals and attempted to address this tension, the fundamental problem is that defendants are routed to HTICs based on their arrest charges, conflating all sex work with human trafficking and ignoring exploitation in other labor sectors. Individuals with prostitution-related charges are automatically directed to HTICS, regardless of whether force, fraud, or coercion is involved in the case.

While the HTIC system is an improvement on the traditional criminal legal approach to trafficking, they also perpetuate a dangerous precedent. Specialized intervention courts have proven to be beneficial in certain contexts because they are better equipped to account for mitigating circumstances and tailoring services to defendants.⁹⁶ But a review of New York’s HTICs has shown that conflation detracts from the efficacy of services that are provided and often imposes unrealistic requirements on defendants to complete mandated programming. The needs of human trafficking survivors and consensual sex workers are very different and a blanket approach does not serve this distinction. Sex workers are compelled to identify themselves as survivors to avoid criminal penalties, feeding conflation. The courts “confuse criminal justice coercions and interests with the structures and practices needed for effective uptake of counseling and social services by marginalized and at-risk populations,” offering services that are too narrow in scope to understand and serve the needs of clients and interrupt the cycle of criminalization.⁹⁷

⁹² Abigail Swenstein and Kate Mogulescu, “Resisting the Carceral: The Need to Align Anti-Trafficking Efforts with Movements for Criminal Justice Reform,” *Anti-Trafficking Review*, no. 6 (May 15, 2016): pp. 118-122, <https://doi.org/10.14197/atr.201216610>.

⁹³ Cojocaru, “My Experience Is Mine to Tell.”

⁹⁴ Carol Rambo, “The Reflexive Self Through Narrative: A Night in the Life of an Exotic Dancer/Researcher,” in *Investigating Subjectivity: Research on Lived Experience*, ed. Carolyn Ellis and Michael Flaherty (The University of Memphis, n.d.), pp. 102-124.

⁹⁵ Cojocaru, “My Experience Is Mine to Tell.”

⁹⁶ “Position/Policy Statement: Specialized Court Programs” (National Safety Council, 2019),

<https://www.nsc.org/getattachment/212286cc-0587-469b-b59f-891f247439ed/hc-specialized-court-programs-154>.

⁹⁷ “Un-Meetable Promises: Rhetoric and Reality in New York City’s Human Trafficking Intervention Courts” (Yale Law School, September 2018), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable_promises_htic_report_ghjp_2018rev.pdf.

Meanwhile, many survivors of human trafficking who are not arrested for sex work go unnoticed and are prosecuted for crimes they may have been forced to commit in regular criminal courts. As previously mentioned, non-sexual labor accounts for 80% of trafficking worldwide. Unless they have prior prostitution convictions or an astute defense attorney, victims of trafficking charged with non-prostitution crimes are not diverted to HTICs. Those survivors with non-prostitution convictions arising from their exploitation also could not have charges vacated from their records in New York until November 2021.

2. Massage parlor case study

Regressive rhetoric and conflation also play out in the social conception and media portrayals of massage workers in the United States. Massage parlors are often operated and staffed by immigrants from eastern Asia. Massage parlors are common targets for ‘anti-trafficking raids’ by law enforcement meant to ‘save’ the vulnerable immigrant women working there from the abuse they are assumed to be suffering at the hands of exploitative management. Raids often involve high levels of surveillance and frequently lead to the harassment of workers at the hands of law enforcement. Usually, the women working at these parlors are the ones who end up being arrested, held for a disproportionate amount of time, often suffering dire immigration consequences. Suspected trafficking schemes are rarely unearthed. Far from a rescue, stings are not only traumatic; they also penalize immigrants for participating in one of the few work options available to them, invoking the trafficking narrative to obscure the underpinnings of structural inequality that have created this dynamic in the first place.

One of the most recent and well-known examples of a failed massage parlor sting occurred as a result of the anti-trafficking fervor surrounding the NFL. During the 2019 NFL playoffs, the billionaire owner of the New England Patriots Robert Kraft was charged with two misdemeanor counts of soliciting prostitution as part of what law enforcement initially labeled a \$20 million international trafficking ring.⁹⁸ Kraft had visited Orchids of Asia Day Spa in Palm County, Florida twice in January of that year and received ‘illicit’ massages from employees there. Unbeknownst to Kraft, the spa owners, and its employees, local police had staked out Orchids after a salon inspector notified them that there were indicators that some of the workers might be living at the spa, a sign of human trafficking. Finding semen in the trash, Jupiter police requested a sneak-and-peek warrant and installed hidden cameras in the massage rooms.⁹⁹ When customers left Orchids, police would follow them and pull them over for a traffic violation as a means of identifying them. On February 19th, local officers staged several dramatic stings of different massage parlors in the area before announcing the investigations and accompanying charges.

The problem is that no sign of trafficking or exploitation ever emerged. The only people who found themselves in prison were the masseuses that law enforcement had busted the spas to “save.” One of the owners of Orchids was charged with a second-degree misdemeanor for “maintaining a house of prostitution,” twenty-six counts of soliciting others to commit prostitution, and a second-degree felony for deriving support from prostitution, which is punishable by up to 15 years in prison. Because no global syndicated trafficking ring ever revealed itself, the victim of their crimes was listed as ‘the state of Florida’. One of the women working at the spa allegedly had her passport confiscated so that she couldn’t

⁹⁸ Jeong, “You Won’t Believe What Happened”.

⁹⁹ *Id.*

escape, but she denied that the confiscation ever occurred. An employee was occasionally sleeping on the premises, but she had asked to do so on days she worked because she lived out of state and her boss had been driving her to and from work every day. When her boss fell ill and could no longer carpool with her, she asked to stay at the spa.

The spa's co-owners were able to get out on bail, but many of their workers were sent to ICE detention centers and ultimately deported. They were guilty of trying to eke out a living in the least-bad option presented to them. Meanwhile, Kraft, aided by "the best defense team money can buy" and his fellow patrons of the day spa were eventually cleared of the charges against them. His New England Patriots went on to win the Super Bowl that season.

Two years earlier, massage parlor raids had come under increased scrutiny in New York when Yang Song, a 38-year-old woman from China who worked in a massage parlor in Queens died after jumping out of a window to flee police during a raid by NYPD's Vice division. Song had been arrested on prostitution charges during a previous sting.

Raids are incredibly traumatizing, but to make matters worse, Song was sexually assaulted while in custody the first time. She bravely reported the assault and as a result, was subjected to intense police harassment.¹⁰⁰ Officers pressured Song to become an informant and "report on other masseuses". They told her that they would pay her but she needed to sign a contract. Song refused and she never received any follow-up regarding the officer who assaulted her. There is speculation that Song jumped because she feared deportation if she was caught.¹⁰¹

California is no exception to the problematic policing of massage parlors. In 2005, a series of raids of massage parlors and other businesses in Los Angeles and San Francisco were conducted to break up two alleged criminal syndicates suspected of smuggling Korean women into the United States for prostitution. Nearly 200 people were arrested in all. 150 of them were women charged with prostitution.¹⁰² Though trafficking was suspected by law enforcement and assumed by many media outlets, no signs of forced prostitution were ever found. Referred to as 'Operation Gilded Cage,' advocates and experts have since referenced the arrests as an example of how conflation and neoliberal anti-trafficking narratives erase the individual experiences and agency of those trading sex, as well as the structural determinants that might make sex work a viable path for self-sufficient and enterprising individuals, given the options available to them.¹⁰³ In that way, neoliberal anti-trafficking policy and its paradoxes both create the context for migration and independence from state and NGO interventions and also form the narratives through which we understand migrant sex work.

¹⁰⁰ Melissa Gira Grant and Emma Whitford, "Family, Former Attorney of Queens Woman Who Fell to Her Death in Vice Sting Say She Was Sexually Assaulted, Pressured to Become an Informant," *The Appeal*, December 15, 2017, <https://theappeal.org/family-former-attorney-of-queens-woman-who-fell-to-her-death-in-vice-sting-say-she-was-sexually-d67461a12f1/>.

¹⁰¹ *Id.*

¹⁰² David Rosenzweig and Connie Kang, "Raids on Brothel Rings Net 45 Arrests," *LA Times*, July 2, 2005, <https://www.latimes.com/archives/la-xpm-2005-jul-02-me-smuggling2-story.html>.

¹⁰³ Sealing Cheng and Eunjung Kim, "The Paradoxes of Neoliberalism: Migrant Korean Sex Workers in the United States and 'Sex Trafficking,'" *Social Politics: International Studies in Gender, State & Society* 21, no. 3 (August 21, 2014): pp. 355-381, <https://doi.org/10.1093/sp/jxu019>.

V. The Super Bowl and Human Trafficking - Fact vs. Fiction

The Super Bowl sex trafficking myth has been debunked many times over, yet somehow it maintains its legitimacy in public opinion, the media, public policy, and law enforcement responses, to the great detriment of public safety, human rights, and resource expenditure.¹⁰⁴ Anti-trafficking hysteria around the Super Bowl derives from the belief that large sporting events attract a large number of sex buyers to a single location and that, as a result of the high demand for commercial sex, trafficking will proliferate. Not only does sex trafficking not increase around the Super Bowl, but the assumptions that demand for commercial sex will spike at the event and that increased demand for commercial sex will drive trafficking are also false.

Though hysteria and media coverage around alleged Super Bowl trafficking spikes are commonplace, there has never been much reporting on what actually takes place at these events. At Super Bowl LII in Atlanta in 2019, over 40 law enforcement agencies were deployed, engaging in human trafficking ‘stings’ in response to an imagined “crisis”. After the event was over, the chief of police reported that not only were there no trafficking arrests made related to the event but arrests for prostitution and related crimes were also consistent with the city’s usual numbers.¹⁰⁵ Reporting on Super Bowls in 2008, 2009, and 2010 in Phoenix, Tampa, and Miami respectively, law enforcement agencies also found that though they increased policing in preparation, they did not net any more prostitution arrests during the week leading up to, during, or after the event than was typical for their cities.¹⁰⁶ But the human cost of over-policing is significant; for communities with a high degree of income disparity, policing and contact with the criminal legal system can have a lifelong impact. In this particular instance, the repercussions are felt most by sex workers, the LGBTQ community (particularly transgender women of color), immigrants, unhoused individuals, and trafficking survivors themselves.¹⁰⁷

A study of empirical evidence around sex trafficking and the Super Bowl also found that there was no causal link between the event and human trafficking. The report noted that 76% of print media in the United States from 2010 to 2016 propagated the Super Bowl sex trafficking narrative. After collaborating with media reporting in 2018 to shift communications strategies to be more in line with empirical evidence, media narratives shifted.¹⁰⁸ Sensationalist reporting plays an important role in our perceptions around human trafficking and its connection to sporting events, and this myth imbued with conflation narratives between sex work and trafficking still plays a role in public policy. To craft more effective trafficking responses, it is important to examine why and how the myth is perpetuated.

¹⁰⁴ Brown, “Super Bowl Sex-Trafficking Myths Return”.

¹⁰⁵ Kalmbacher, ‘Misinformation Used to Increase Policing’.

¹⁰⁶ Ham, “What’s the Cost of a Rumour,” 23.

¹⁰⁷ Cristine Sardina, “Marketing Mass Hysteria: Anti-Trafficking Awareness Campaigns Go Rogue,” openDemocracy, June 20, 2019,

<https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/marketing-mass-hysteria-anti-trafficking-awareness-campaigns-go-rogue/>.

¹⁰⁸ Martin and Hill, “Debunking the Myth of ‘Super Bowl Sex Trafficking,’” 14.

A. Origins of the Myth & Purpose

Human trafficking is a serious human rights violation that warrants significant, sustained, and data-driven policy responses. In its 2011 report on the myth around human trafficking and sporting events, the GAATW warned against the deleterious impact of the enormous resources that were being channeled into policing sporting events to protect against human trafficking, “resources that are needed elsewhere”.¹⁰⁹

The supposed link between sporting events and trafficking for prostitution has its origins in the conflation between prostitution and human trafficking. It was first used to garner media attention in the time leading up to the 2004 Athens Olympics. Critically, concern was not raised by organizations working directly with trafficked persons in the region but by Northern European governments who criticized the Greek government’s laws regulating prostitution.¹¹⁰ Athens had been attempting to enforce long-standing brothel regulations and these measures were reported to the media as an attempt to increase the number of operating brothels, leading European governments to fear that the city was attempting to encourage ‘sex tourism’.

In the end, a review of the event found no trafficking cases directly related to the 2004 Olympics.¹¹¹ The executive director of a faith-based organization working in the area at the time testified before the U.S. House of Representatives that NGO street work during the Olympics “yielded unexpected results”. Rather than encountering victims of trafficking, outreach workers saw the same sex workers that usually worked the city. “Of the new faces, few were identified as victims of trafficking, and even fewer had entered the country recently. Our experience seemed to hold up around the city: no increase in prostitution around the Athens Olympics. The Greek Union of Prostitutes even reported a decrease in demand compared to the previous year.”¹¹² Children’s rights NGOs also reported no increases in child trafficking for prostitution during the Olympics that year.¹¹³

Although no trafficking rings materialized in 2004, the moral panic around the event stuck. Similar rumors about imported foreign prostitutes and sex tourism were reported leading up to the 2006 World Cup in Berlin, the 2010 Olympics in Vancouver, the 2010 World Cup in South Africa, and, of course, the Super Bowl. In each instance, media and anti-prostitution groups predicted massive spikes in trafficking. Policing of commercial sex increased in response, sometimes leading to increased harassment and arrests of sex workers.¹¹⁴ Of all reports of trafficking around these major sporting events, only five cases of trafficking, from the 2010 World Cup were ever confirmed to be connected to any of them.¹¹⁵

¹⁰⁹ Ham, “What’s the Cost of a Rumour,” 8.

¹¹⁰ Annalee Lepp, Sarah Hunt, and Shauna Paull, “2010 Winter Games Analysis on Human Trafficking” (Global Alliance Against Traffic in Women Canada, August 2013), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/wntr-gms-2010/wntr-gms-2010-eng.pdf>.

¹¹¹ *Id.*

¹¹² U.S. House of Representatives Committee on International Relations, Subcommittee on Africa, Global Human Rights and International Operations, *Germany’s World Cup Brothels: 40,000 Women and Children at Risk of Exploitation Through Trafficking* (Washington, D.C., 4 May 2006), 16-21, http://commdocs.house.gov/committees/intlrel/hfa27330.000/hfa27330_of.htm.

¹¹³ Ham, “What’s the Cost of a Rumour,” 22.

¹¹⁴ *Id.* at 21; Samuel Loewenberg, “Fears of World Cup Sex Trafficking Boom Unfounded,” *The Lancet* 368, no. 9530 (July 8, 2006): pp. 105-106, [https://doi.org/10.1016/s0140-6736\(06\)68984-8](https://doi.org/10.1016/s0140-6736(06)68984-8).

¹¹⁵ *Id.*

Advocates have proposed several theories on why this myth is so persistent and its purpose in both culture and political debates:

1. A fundraising strategy for organizations fighting trafficking around these events

While it is difficult to precisely quantify spending on anti-trafficking efforts, we know that NGOs and government programs are often receiving duplicative funding from multiple sources and programs. The plethora of anti-trafficking organizations and diverse backgrounds of these networks, including feminists, evangelists, conservatives, liberals, humanitarian workers, and more, means that competition for funding is fierce.¹¹⁶ Studies have also found massive inefficiencies in how NGOs and law enforcement allocate this funding.¹¹⁷ The inefficiency is both a symptom and a cause of restrictive gag-order policies set by the US and other governments which prevent organizations that receive funding from supporting human-rights centered policies like the decriminalization of adult consensual sex work.¹¹⁸

As a result of this restriction and competition for funding, the hysteria around large events creates an opportunity for organizations to capitalize on increased public awareness and attention to the issue. Events like the Super Bowl can become marketing or fundraising campaigns for organizations.¹¹⁹

Raising awareness around human trafficking is not negative—trafficking is a very serious issue and requires a holistic approach to combatting the threat it poses to individuals and communities— but the limitations placed on organizations create implicit pressure to dramatize the problem of trafficking in order to secure funding rather than spread awareness.¹²⁰ The framework of these campaigns is ultimately dangerous for trafficked individuals. Not only do they inflate numbers and spread false information about the nature of trafficking, but by solely focusing on individuals trafficked for commercial sex, and by extension of conflation, sex workers, they obscure non-sexual labor trafficking altogether, with disastrous impacts for the majority of survivors.¹²¹

2. A method of virtue signaling by national and local governments taking a stand against human trafficking

Because of the gravity of human trafficking, there has been a great deal of pressure from national and international entities to focus policy and funding on combatting this atrocity, at home and abroad. Large events such as the Super Bowl provide an opportunity for state and national governments to demonstrate their attention to the issue.¹²²

¹¹⁶ Carrie N. Baker, “An Examination of Some Central Debates on Sex Trafficking in Research and Public Policy in the United States,” *Journal of Human Trafficking* 1, no. 3 (July 2015): pp. 191-208, <https://doi.org/10.1080/23322705.2015.1023672>.

¹¹⁷ Suzanne Hoff, “Where Is the Funding for Anti-Trafficking Work? A Look at Donor Funds, Policies and Practices in Europe,” *Anti-Trafficking Review* 3 (September 22, 2014), <https://doi.org/10.14197/atr.20121436>.

¹¹⁸ Pennybacker, “The Harmful Prioritization of ‘Sex Trafficking’ in U.S. Anti-Trafficking Discourse”.

¹¹⁹ Sardina, “Marketing Mass Hysteria”.

¹²⁰ *Id.*

¹²¹ Baker, “An Examination of Some Central Debates on Sex Trafficking in Research and Public Policy in the United States”.

¹²² Ham, “What’s the Cost of a Rumour,” 30.

3. A way to grab media and public attention for the issue of anti-trafficking

Until 2018, the vast majority of media articles on trafficking and the Super Bowl perpetuated the myth that the event would lead to a massive spike in human trafficking and sex tourism. A research paper reviewing 111 of these articles found three main trends in reporting around sporting events and sexual exploitation. Articles assumed a link among Super Bowls, sex trafficking, and commercial sex 82% of the time. Most of them quoted authoritative sources to support that narrative and urged increased policing or social service efforts to combat trafficking around the event. Lastly, there was a tendency to report numbers — “in one story, ‘10,000 teen hookers’”— without citing evidence.¹²³ Researchers surmised that “the linking of sporting events and trafficking reflects broader narratives about sexuality and sexual exploitation that depict men as aggressive and autonomous, and women as victims in need of rescue or as criminals who should be arrested.”¹²⁴ Reporting on and raising awareness of trafficking is important, but human trafficking is an issue that persists year-round. As the Polaris Project pointed out in 2019, encouraging hysteria around certain events detracts from the need to establish effective, holistic policy responses rather than sensationalized rhetoric.¹²⁵

4. Justification for social control measures such as increased policing and migration controls based on anti-prostitution ideology

As previously noted, the most common response to trafficking hysteria surrounding large sporting events is increased policing, particularly of prostitution. Rhetoric also encourages fear of ‘foreign threats’ and individuals trafficked into the country for sex tourism related to the event. National governments invoke arguments of ‘protecting’ local citizenry through increased surveillance and travel restrictions.¹²⁶

Travel restrictions and anti-trafficking raids targeting sex workers both endanger trafficking survivors rather than protect them. Regressive migration policies leave individuals “more vulnerable to irregular forms of migration including smuggling, human trafficking, and forced labor.”¹²⁷ Trafficking raids and arrests often target immigrant communities and leave them vulnerable to deportation. Increased law enforcement activity also encourages discriminatory policies to ‘clean up the streets,’ displacing sex workers, unhoused populations, and other marginalized groups, further endangering sex workers by forcing them to work in more isolated areas.¹²⁸ In Los Angeles, Black adults make up over half of the people arrested for loitering for the purpose of prostitution, even though they are only 8.9% of the city’s population.

Arrests are disruptive and harmful to individual lives. In a 2009 study, trafficking victims reported being arrested an average of seven times during their exploitation. Encounters with the police are often cited as one of the most traumatizing experiences survivors endure.¹²⁹ They are often biased and discriminatory,

¹²³ White, “Research Debunks Myth of Super Bowl Sex Trafficking, Improves Media Narrative.”

¹²⁴ *Id.*

¹²⁵ “Worried about Human Trafficking and the Super Bowl? Consider Your Nachos,” Polaris, December 3, 2019, <https://polarisproject.org/blog/2019/01/worried-about-human-trafficking-and-the-super-bowl-consider-your-nachos/>.

¹²⁶ Ham, “What’s the Cost of a Rumour,” 33.

¹²⁷ *Id.*

¹²⁸ *Id.*, at 41.

¹²⁹ Melissa Ditmore, “The Use of Raids to Fight Trafficking in Persons,” December 18, 2008, p.5, <https://sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf>.

and they do nothing to prevent trafficking from taking place or provide resources to survivors of trafficking.¹³⁰

VI. Law, Policy, and Policing of Sex Work in California

As Inglewood prepares to host Super Bowl LVI, national attitudes and policies towards sex work and human trafficking will interact with local policing trends and California's history of sex worker rights activism and approaches to combatting trafficking. The media has already released articles that quote Los Angeles County Sheriff Alex Villanueva warning about the Super Bowl's alleged tendency to draw in traffickers and conflating trafficking and consensual sex work.¹³¹ In the following section, we provide a brief contextual overview of sex workers' rights in California, legislation around sex work and human trafficking, and trends in criminalization more broadly. Arrest and dispensation data have been collected from the CA Department of Justice website. Unfortunately, we were unable to obtain data specific to prostitution and related crimes, but we can glean overall arrests trends for misdemeanors and felonies.

A. Sex Worker Rights and Activism in California

On July 31st, 2019, California Governor Gavin Newsom signed Senate Bill 233 into law. This landmark bill provides immunity for sex workers who witness or are the victim of a crime while engaged in sex work and bans the use of condoms as evidence to arrest individuals suspected of prostitution.¹³² Prior to the enactment of these policies, both San Francisco and Berkeley counties created similar policies.¹³³ Advocates for sex worker rights fought long and hard to get this legislation passed, carrying on a robust legacy of sex worker rights activism in the state.

California first criminalized sex work in 1872 through Penal Law § 647 which criminalized prostitution, loitering, begging, public intoxication, drug use, and other crimes classified as "moral" issues. Like other states at the time, California had red-light districts in which prostitution was tolerated, if not accepted. The criminalization of sex work resulted from a mounting moral panic in the last decades of the 19th century, ultimately leading to the passage of the Mann Act in 1910.¹³⁴ PL § 647 was repealed in 1961 and replaced by PL § 647(b) which is the current statute criminalizing solicitation, agreeing to engage, or engaging in commercial sex.

¹³⁰ *Id.*

¹³¹ Courtney Drakeford, "Super Bowl Sparks Human Trafficking Concerns, Los Angeles Sheriff Urges Report Of Suspicions," *International Business Times*, January 22, 2022, <https://www.ibtimes.com/super-bowl-sparks-human-trafficking-concerns-los-angeles-sheriff-urges-report-3381129>.

¹³² S.B. 233, 2019-2020 Leg., Reg. Sess. (Cal. 2019), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB233; see also "California Sex Worker Rights: Updated 2021," Pride Legal, February 15, 2021, <https://pridelegal.com/california-sex-worker-rights/> and "Know Your Rights" The ACLU of California, February 2020, https://www.aclusocal.org/sites/default/files/field_documents/aclu_socal_kyr_sex_worker_rights_sb233_ab5.pdf.

¹³³ Meera Srinivasan, "California Gov. Gavin Newsom Passes Bill Prioritizing Protection of Sex Workers," *The Daily Californian*, August 1, 2019, <https://www.dailycal.org/2019/07/31/california-gov-gavin-newsom-passes-bill-prioritizing-protection-of-sex-workers/>.

¹³⁴ "The Oldest Profession," CSUN University Library, March 13, 2018, <https://library.csun.edu/SCA/Peek-in-the-Stacks/prostitution>.

California, particularly San Francisco, has been a leading force in the movement to promote sex worker health, safety, and human rights. Activism around these issues picked up in the second half of the 20th century. In the 1960s, sex workers were a central part of pre-Stonewall LGBTQ rights demonstrations across the country.¹³⁵ In 1966, one of the most famous pre-Stonewall protests took place at Compton's Cafeteria, a 24-hour eatery in San Francisco's Tenderloin, when police officers started harassing a drag queen who was eating there. In his book *Strapped For Cash: A History of American Hustler Culture*, historian Mack Friedman explores how this event is representative of the extent of "pangender sex worker unity" in this movement.

Sex workers were also at the forefront of raising awareness around the conditions faced by vulnerable and marginalized communities in California. In San Francisco, a group of trans and queer kids living on the street, many of whom sold sex in the Tenderloin, established an advocacy organization called Vanguard in 1966. The group published a newsletter on the issues that they faced, leading to meetings with city officials. Vanguard's work was a powerful example of early challenges to the ruling narrative that criminalization was the default approach to commercial sex.¹³⁶ Though the group dissolved soon after, the groundwork of activism and intersectionality had been laid.

One of the most famous sex worker rights groups, Call Off Your Old Tired Ethics (COYOTE), was founded in San Francisco in 1973. The group quickly grew to other cities in California and eventually established chapters across the country. COYOTE advocates for the decriminalization of adult consensual sex work but their primary function is to conduct outreach, direct services, and public education to end stigma and provide crisis counseling, support groups, and legal and social service referrals to sex workers.¹³⁷

COYOTE has influenced important policy and legal advances since its inception. The group pressured public defenders to provide better representation for people accused of soliciting and prostitution and sponsored dozens of lawsuits on behalf of sex workers. COYOTE also successfully advocated to lift the mandatory three-day venereal disease quarantine and penicillin treatments imposed by the San Francisco Police Department on people arrested for prostitution, arguing that the incidence of STIs was as high among people 20 to 40 years old as among sex workers.¹³⁸ St. James Infirmary was established as an offshoot of COYOTE. It is a peer-run organization serving sex workers throughout the Bay Area. It is also the first occupational health and safety clinic in the U.S. run by and for sex workers.¹³⁹

The work of these organizations, individual activists, and impacted communities have created critical precedent for the recognition of sex worker rights in California. Unfortunately, legislative and policy changes do not always follow. In the next section, we explore California statutes criminalizing sex work as well as important legislation recently introduced and passed.

¹³⁵ Scott W Stern, "Sex Workers Are an Important Part of the Stonewall Story, But Their Role Has Been Forgotten," *Time*, June 27, 2019, <https://time.com/5604224/stonewall-lgbt-sex-worker-history/>.

¹³⁶ Laura Renata Martin, "Precarious City: Marginal Workers, The State, And Working-Class Activism In Post-Industrial San Francisco, 1964-1979." *UC Santa Cruz*, 2014. <https://escholarship.org/uc/item/7s7753rq>.

¹³⁷ "Call Off Your Old Tired Ethics (COYOTE)," ProCon, March 16, 2020, <https://prostitution.procon.org/source-biographies/call-off-your-old-tired-ethics-coyote/>.

¹³⁸ Valerie Jenness, "From Sex as Sin to Sex as Work: Coyote and the Reorganization of Prostitution as a Social Problem," *Social Problems* 37, no. 3 (August 1990): pp. 403-420, <https://doi.org/10.2307/800751>.

¹³⁹ "Who We Are," St James Infirmary, 2017, https://www.stjamesinfirmary.org/wordpress/?page_id=2.

B. California Statutes

In California, prostitution is criminalized under PL § 647 of Title 15, Chapter 2 of the California Penal Code, classified as disorderly conduct. This statute is used to prosecute anyone who solicits, agrees to engage in, or who engages in, any act of prostitution. PL § 647 is a misdemeanor offense. Other prostitution offenses can be found in Chapter 2.5. Supervising or otherwise aiding a prostitute, § 653.23, criminalizes directing, supervising, recruiting, and otherwise aiding another person in the commission of a prostitution violation or collecting or receiving all or part of the proceeds earned from an act or acts of prostitution committed by another.

PL § 653.22 criminalizes loitering with the intent to engage in prostitution. Such intent is “evidenced by acting in a manner and under circumstances that openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution,” with more specific definitions laid out. SB 357, also known as the Safer Streets Act, was proposed by Senator Scott Weiner to repeal section 653.22 on the basis that it allows law enforcement to stereotype and discriminate against transgender women of color.¹⁴⁰ In Los Angeles, Black adults make up over half of the people arrested under this provision, even though they are only 8.9% of the city’s population.¹⁴¹ “New York has led the way, and shown that it’s far past time we end this discriminatory targeting of suspected sex workers,” Senator Wiener stated in a news release. “We’re experiencing a terrifying epidemic of violence against trans women of color, and we need to be proactive in improving their safety. Our laws should protect the LGBTQ community and communities of color, and not criminalize sex workers, trans people, and Brown and Black people for quite literally walking around or dressing in a certain way.”¹⁴² SB 357 passed the legislature in 2021 and as of January 2022 is awaiting the governor’s signature.

PL § 628 criminalizes performing massage therapy without a license but is often used by law enforcement to target suspected prostitution or trafficking operations. In the last two decades, city officials have become increasingly wary of massage businesses as “fronts for prostitution and human trafficking.”¹⁴³ These arrests are often discriminatory, targeting immigrants of Asian descent with serious immigration consequences.¹⁴⁴

Many of the laws criminalizing the purchase of sex can be found in Chapter 1, Rape, Abduction, Carnal Abuse of Children, and Seduction, under Title 9 of the criminal code. § 266e makes it illegal for any person to purchase or pay anything of value for a “person for the purpose of prostitution as defined in subdivision (b) of Section 647, or for the purpose of placing such person, for immoral purposes, in any house or place against his or her will.” Similarly, § 266f criminalizes any person who receives any money or other valuable thing for or on account of his or her placing in custody, for immoral purposes

¹⁴⁰ A.B. 262, 2021-2022 Leg., Reg. Sess. (Cal. 2021), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB262.

¹⁴¹ “Safer Streets For All Act (SB 357).” *ACLU Action*, September 2021. ACLU of California Action. <https://aclucalifornia.org/bill/sb-357/>.

¹⁴² John Ferrannini, “Advocates Push Sex Work Law Reform,” *Bay Area Reporter*, March 31, 2021, <https://www.ebar.com/news/news/303497>.

¹⁴³ KCRA Staff, “Prostitution in Massage Parlors Focus of Proposed Regulations in Sacramento,” KCRA (KCRA, April 17, 2019), <https://www.kcra.com/article/prostitution-massage-parlors-sacramento-regulation/27164442>.

¹⁴⁴ Pride Legal, “Massage Parlor Laws in California,” Pride Legal, January 19, 2021, <https://pridelegal.com/massage-parlor-laws-california/>.

(prostitution), any person, whether with or without his or her consent. Both crimes are felonies and punishable by imprisonment for 16 months, two years, or three years.

§ 266g is a rather outdated statute not often invoked. It criminalizes using “force, intimidation, threats, persuasion, promises, or any other means,” to place, leave, or procure a person’s wife in a house of prostitution, or to conspire to do so. § 266h criminalizes pimping, defined as “any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution... or who solicits or receives compensation for soliciting for the person.” Pimping is a felony, and is “punishable by imprisonment...for three, four, or six years.” If the person engaged in prostitution is a minor, penalties increase from three, four, or six years to three, six, or eight years.

§ 266i criminalizes pandering, defined as procuring another person for the purpose of prostitution, convincing someone to become a prostitute, procuring a place of prostitution for another person, causing, an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate, procuring another person for the purpose of prostitution, or receiving, giving, or agreeing to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution. Pandering is a felony, punished by imprisonment of anywhere from 3-8 years, depending on the age of the person engaged in prostitution.

Chapter 8 of California’s Penal Code regulates Indecent Exposure, Obscene Exhibitions, and Bawdy and Other Disorderly Houses. § 315 criminalizes keeping or residing in a house of ill-fame, resorted to for the purposes of prostitution or lewdness, and § 316 criminalizes keeping a disorderly house. For both statutes, “ill repute” is seen as evidence as such.

C. Arrest Data

Unfortunately, because we do not have access to statute-specific data, it is difficult to glean clear and constructive takeaways from the arrest data, but we know that data can tell important stories. By looking at who is facing charges for a particular crime, at what frequency, and where, we can consider the efficacy of criminal justice policies related to sex work, human trafficking, and many more crimes. Upon commencing this report, a request was submitted to the California Department of Justice for statute-specific arrest and dispensation information. While the authors did not receive the information in time to include it here, we are able to look at overall arrest trends for misdemeanors and felonies in the state, as provided by the DOJ’s Open Justice Data Portal. We hope that the information presented below

can shed light on topics and questions to be further explored.

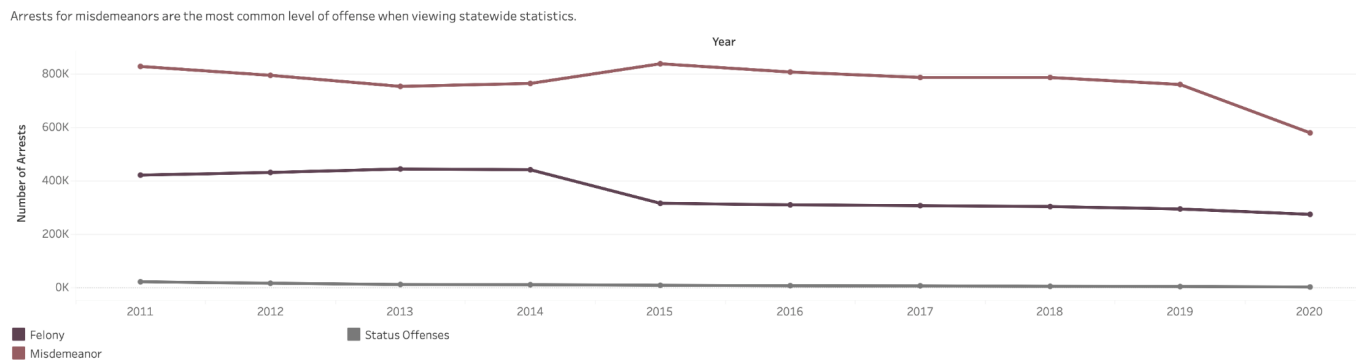


Figure 1. Arrests by Level of Offense in California, 2011-2020.¹⁴⁵

Most arrests in California from 2011-2020 are for misdemeanor crimes as is common across the US.

Arrests have remained relatively consistent over the last decade with a small dip between 2019 and 2020.

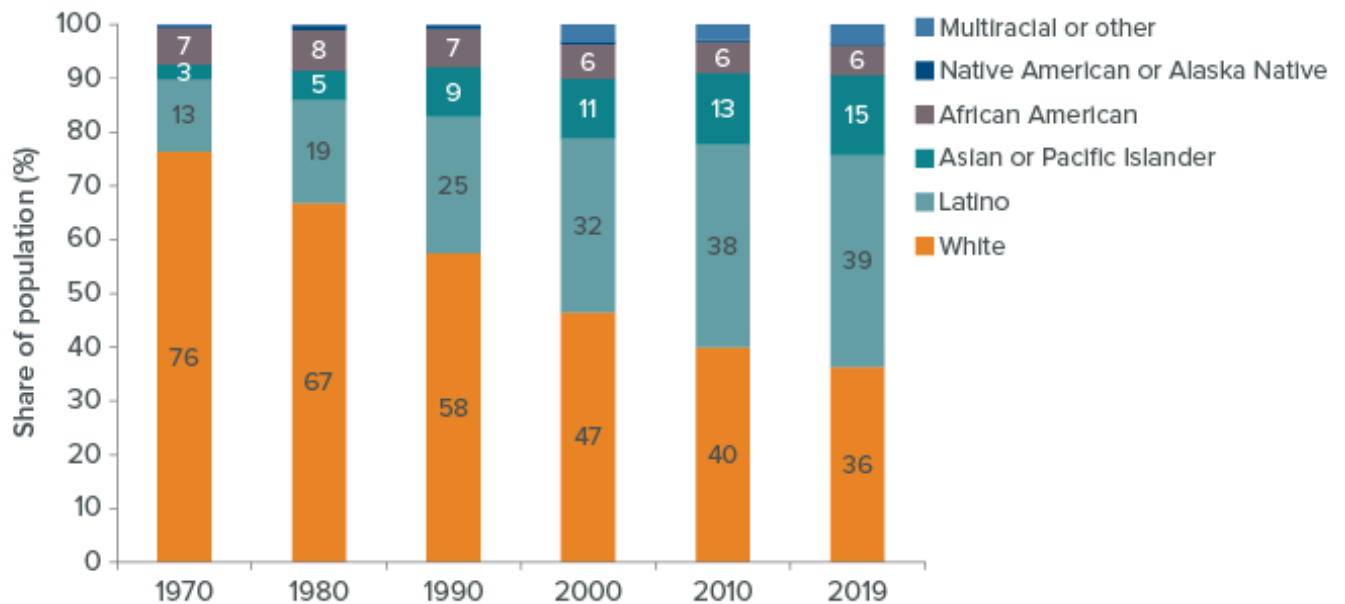


Figure 2. California's Population by Race, 1970-2019¹⁴⁶

According to 2020 estimates, California has a population of nearly 40 million. In the last four decades, the state has become increasingly diverse. In 2014, the Latinx population surpassed whites as the largest ethnic group in the state. According to 2019 estimates, there are nearly 10 million immigrants in the state. We can use this information to inform our conclusions as we look at the demographics of those arrested for each level of offense to see how and when racial profiling is likely to play out in arrests.

¹⁴⁵ "Arrests, 2011-2022," OpenJustice (State of California Department of Justice, 2022), <https://openjustice.doj.ca.gov/data-stories/arrests>.

¹⁴⁶ Hans Johnson, Eric McGhee, and Marisol Cuellar Mejia, "California's Population" (Public Policy Institute of California, March 2021), https://www.ppic.org/wp-content/uploads/JTF_PopulationJTF.pdf.

1. Misdemeanor Arrests

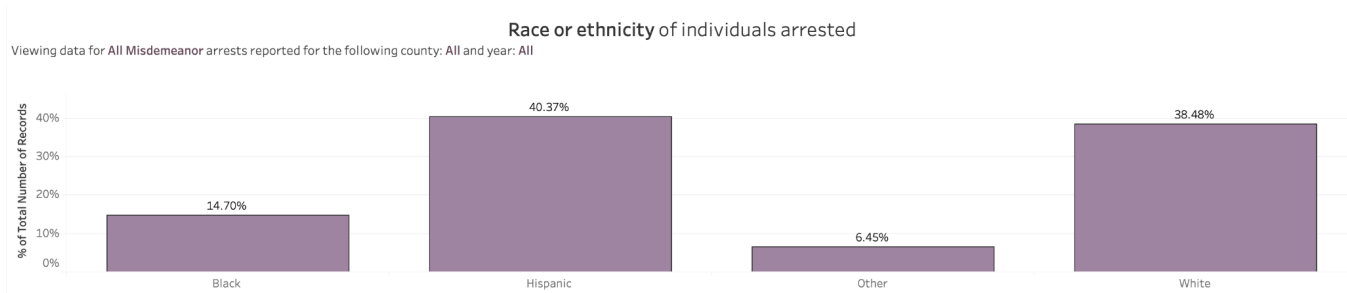


Figure 3. Misdemeanor Arrests by Race in California, 2011-2020.¹⁴⁷

Overall misdemeanor arrests do seem to correlate with population distribution. African Americans are over-represented in misdemeanor arrests, whereas individuals of Asian or Pacific Islander descent are under-represented.

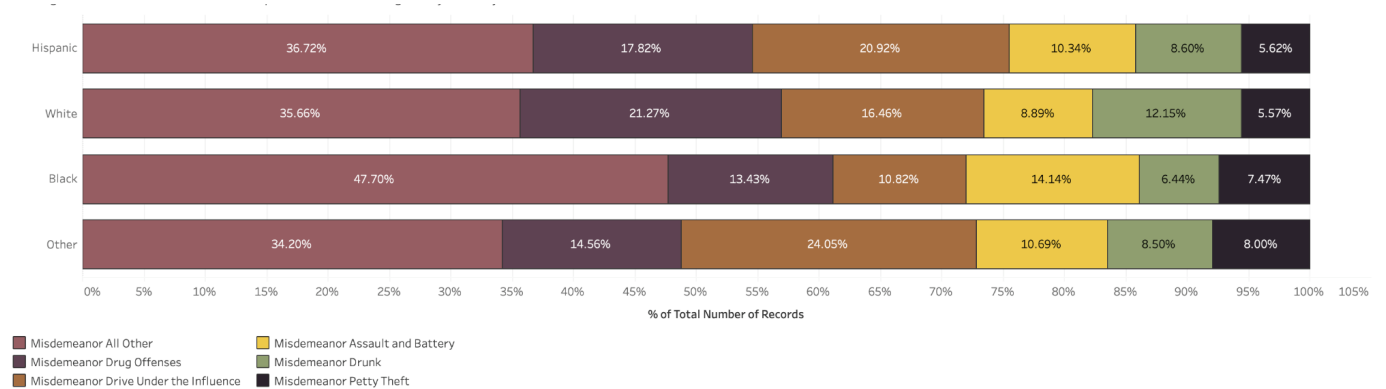


Figure 4. Misdemeanor Arrests by Race and Arrest Type Percentage in California, 2011-2010.¹⁴⁸

It is also useful to look at general categorizations of what different demographic groups are facing arrest for. Prostitution is a misdemeanor that would be found under the ‘Misdemeanor All Other’ category in Figure 4. While this category includes many different types of crimes, the chart shows that, of Black Californians arrested for misdemeanors in the last decade, it is much more likely that these arrests will be in the ‘Other’ category. The significance of this warrants further study. We know that Black women, particularly Black transgender women, are often profiled by law enforcement as sex workers and are targeted for low-level arrests such as prostitution and loitering.¹⁴⁹ The impact of multiple misdemeanor arrests can compound, severely disrupting the lives of defendants and increasing the penalties they face.

¹⁴⁷ “Arrests, 2011-2022,” CA DOJ.

¹⁴⁸ “Arrests, 2011-2022,” CA DOJ.

¹⁴⁹ Jasmine Sankofa, “From Margin to Center: Sex Work Decriminalization Is a Racial Justice Issue,” Amnesty International USA, December 12, 2016, <https://www.amnestyusa.org/from-margin-to-center-sex-work-decriminalization-is-a-racial-justice-issue/>.

This is even more true for individuals who are living in poverty, may not be able to afford bail, and/or have limited resources to mitigate contact with the criminal justice system.¹⁵⁰

2. Felony Arrests

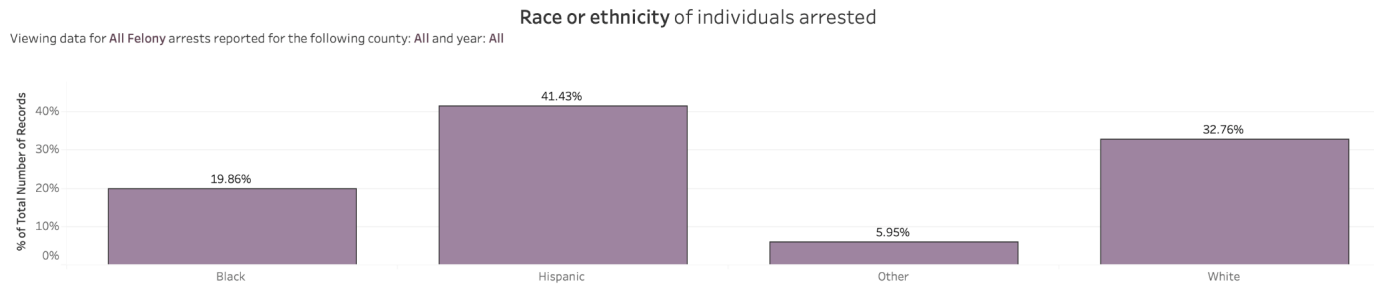


Figure 5. Felony Arrests by Race in California, 2011-2020. ¹⁵¹

Felony arrests from the last decade depart a bit more from California’s demographic distribution. We see more arrests of Hispanic and Black individuals for more serious crimes. The implications of this shift warrant further examination. Individuals arrested for misdemeanors on multiple counts can end up facing felony charges. When it comes to prostitution in California, pimping, pandering, and other third-party charges involving commercial sex are felonies rather than misdemeanors. We would need to look at charge-based data to see if felony arrests reflect greater, similar, or lesser bias than overall trends.

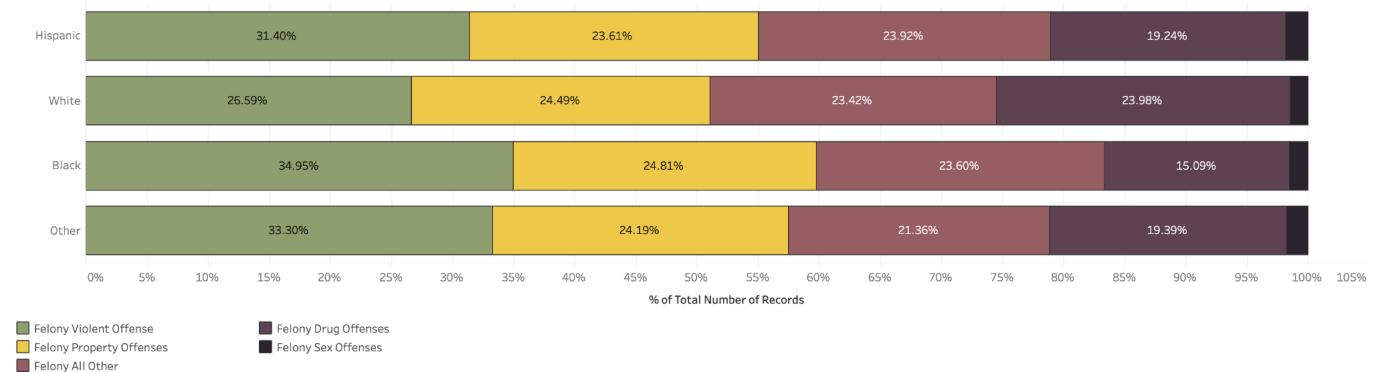


Figure 6. Felony Arrests by Race and Arrest Type Percentage in California, 2011-2010. ¹⁵²

It is evident from Figure 6 that sex-related felony arrests are relatively low. For each demographic, felony sex offenses make up less than 2% of arrests. This may imply that sex workers are arrested much more frequently than clients or third parties. By nature of frequency, it makes sense that sex sellers face arrest more often. Indeed, legal and social service providers in New York confirmed that their sex worker clients

¹⁵⁰ “US: Criminal Justice System Fuels Poverty Cycle.” *Human Rights Watch*, June 21, 2018. Human Rights Watch. <https://www.hrw.org/news/2018/06/21/us-criminal-justice-system-fuels-poverty-cycle>.

¹⁵¹ “Arrests, 2011-2022,” CA DOJ.

¹⁵² “Arrests, 2011-2022,” CA DOJ.

pass through the criminal justice system over and over again while purchasers face arrest much less frequently.¹⁵³

The authors would like to thank the California Department of Justice for making the figures presented above available to the public and for their continued communication and commitment to making the justice process transparent. We look forward to updating this report with statute-specific data.

VII. Conclusion

There is no evidence indicating that human trafficking will increase at and around Super Bowl LVI or any other major sporting event. But as the myth begins to circulate leading up to the big game, we can learn important lessons from the ease with which the narrative around sex work slips into alarmist and conflationist rhetoric. For something that has been so thoroughly disproven, the Super Bowl sex trafficking myth still occupies an unwarranted amount of space in media discourse and policy responses around the event, perpetuating stigma and misunderstanding around sex work and trafficking, wasting the resources of law enforcement, and encouraging over-policing which erodes trust between law enforcement and communities, particularly low in low-income neighborhoods.

With the understanding that demand for commercial sex does not increase around the Super Bowl and that, even if it did, demand for sex work does not drive human trafficking, we considered the dynamics that may be at the root of perpetuating the myth. The commitment to the narrative linking human trafficking to major sporting events provides:

1. A fundraising strategy for nonprofits and NGOs fighting trafficking around these events;
2. A method of virtue signaling by national and local governments taking a stand against human trafficking;
3. A way to grab media and public attention for the issue of anti-trafficking; and
4. Justification for social control measures such as increased policing and migration controls based on anti-prostitution ideology.

But the cost of this myth is far greater than its possible intended purposes. Evidence has conclusively found that the decriminalization of sex work helps to reduce stigma and violence directed at sex workers, improves public health outcomes, and helps combat human trafficking. Criminalization prevents those participating in commercial sex from reporting crimes committed against them for fear of arrest. Even trafficking survivors participating in commercial sex as a result of force, fraud, or coercion fear criminal justice penalties if they come forward as a result of the massive stigma and risk of arrest surrounding sex work. In a criminalized environment, sex workers also have less agency to engage in safe sexual practices and less access to medical care.

The conflation between consensual sex work and human trafficking exacerbates these dynamics. By obscuring the diverse experiences of people who participate in commercial sex and reducing them all to

¹⁵³ Frances Steele, “By the Numbers: New York’s Treatment of Sex Workers and Trafficking Survivors,” ed. Rebecca Cleary, Melissa Broudo, and Ariela Moscovitz (Decriminalize Sex Work, 2022), <https://decriminalizesex.work>.

exploitation, conflation ignores evidence pointing to decriminalization. It also wastes resources that could be used to fight human trafficking and provide services to survivors, instead using them to arrest and criminalize consensual adult sex workers.

Human trafficking is a critical human rights concern that warrants effective and concerted policy responses. Rather than increasing the policing of prostitution around the Super Bowl, we cite the evidence in this support to suggest alternative policy solutions that would create a safer environment for all:

1. Create evidence-based public education campaigns around human trafficking that reduce stigma and provide resources for those who are suffering exploitation, particularly regarding the rights of those who are victimized to report crime without fear of arrest under SB 223;
2. Encourage other states and municipalities to pass similar immunity bills to provide sex workers and trafficking survivors who are victimized the right to report crimes committed against them without facing prosecution;
3. Develop study commissions made up of impacted community members, service providers, public health experts, and law enforcement to study the impact of current policies around human trafficking and sex work and make further recommendations;
4. Conduct mandated and standardized training for law enforcement in all jurisdictions on the critical differences between sex work and trafficking, as developed by the aforementioned study commissions;
5. Fully decriminalize consensual adult sex work, in order to reduce rates of STI transmission and violent crime and to increase law enforcement's ability to detect and address trafficking; and
6. Devote government funds previously used to arrest and incarcerate consensual adult sex workers to provide stigma-free social services and resources for those engaged in sex work and to fight all kinds of human trafficking, including labor trafficking cases that often go undetected.

Our deepest thanks to the attorneys and researchers at SOAR Institute for curating the information in this report.

SOAR INSTITUTE



The Sharmus Outlaw Advocacy and Rights Institute (SOAR Institute) works to shift the minds, hearts, and skills of service providers, communities, and policymakers to benefit those involved in the sex industry, trafficked individuals, and related communities.